

16

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1900~~ 1911

No. ~~121~~ 121

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SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS  
AND HOMER S. KING, TRUSTEES, AND CENTRAL TRUST  
COMPANY OF NEW YORK, TRUSTEE, APPELLANTS,

VS.

THE UNITED STATES.

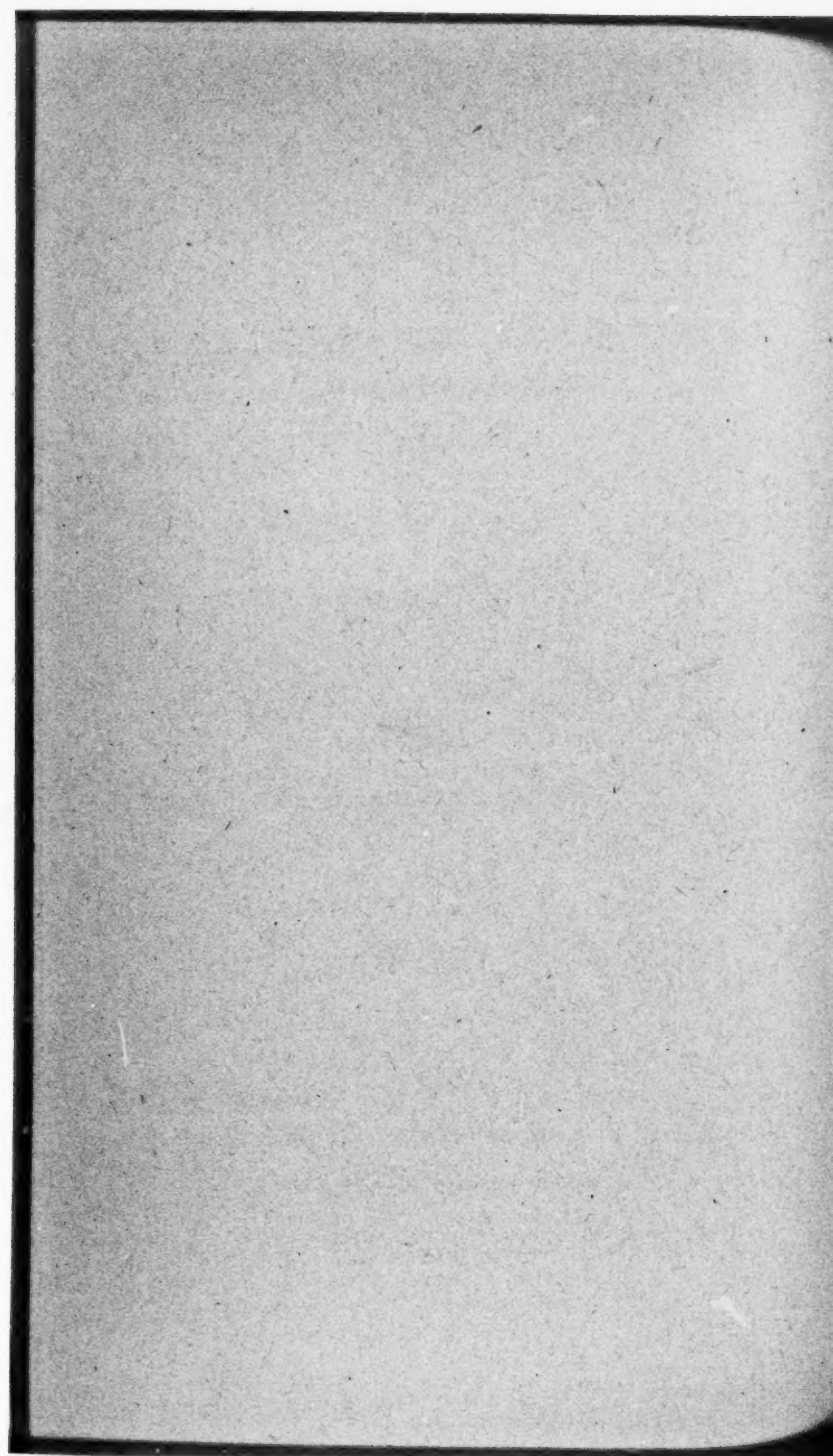
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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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FILED SEPTEMBER 2, 1909.

(21,808.)





(21,808.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 582.

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS  
AND HOMER S. KING, TRUSTEES, AND CENTRAL TRUST  
COMPANY OF NEW YORK, TRUSTEE, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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No. 1492

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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SOUTHERN PACIFIC RAILROAD COMPANY, D. O.  
MILLS and HOMER S. KING, AS TRUSTEES, and  
CENTRAL TRUST COMPANY OF NEW YORK,  
AS TRUSTEE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

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## TRANSCRIPT OF RECORD.

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Upon Appeal from the United States Circuit  
Court for the Southern District of Cali-  
fornia, Southern Division.

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*United States Circuit Court of Appeals for the Ninth  
Circuit.*

**SOUTHERN PACIFIC RAILROAD COMPANY**  
et al.,

Appellants,

vs.

**UNITED STATES OF AMERICA,**

Appellees.

**Order Extending Time to File Record and Docket  
Cause.**

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellants to file the record thereof and to docket the case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is enlarged and extended to and including the 15th day of August, 1907.

Dated at Los Angeles, Cal., June 8th, 1907.

ROSS,  
Circuit Judge.

[Endorsed]: No. ———. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company et al., Appellants, vs.

2     *Southern Pacific Railroad Company et al.*

United States of America, Appellees. Filed June 10,  
1907. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

(No. 1196 Circuit Court.)

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellees.

**Order Extending Time to File Record and Docket  
Cause.**

Good cause appearing therefor, it is hereby ordered that the time heretofore allowed said appellants to file the record thereof and to docket the case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is enlarged and extended to and including the 1st day of September, 1907.

Dated at Los Angeles, Cal., August 12th, 1907.

ROSS,  
Circuit Judge.

[Endorsed]: No. ———. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company et al., Appellants, vs. United States of America, Appellees. Order Extending Time. Filed Aug. 14, 1907. F. D. Monckton, Clerk.

[Endorsed]: No. 1492. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company et al. vs. United States of America. Two Orders Extending Time to File Record and Docket Cause. Re-filed Aug. 17, 1907. F. D. Monckton, Clerk.

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*United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY

et al.,

Defendants and Appellants.

**Citation (Original).**

To United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on June 15th, 1907, pursuant to the appeal of the hereinafter named defendants from the decree of the above-mentioned Court, rendered and entered on March 18th, 1907, in the above-entitled cause, being case No. 1114, wherein the United States is complainant and Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York, as trustee, are defendants, to show cause, if any there be, why the said decree should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the City of Los Angeles, on May, 17, 1907.

ERSKINE M. ROSS,

Judge of the United States Circuit Court, Ninth  
Circuit, Southern District of California.

Service, by copy, of the within citation is hereby  
admitted May 23d, 1907.

ROBT. T. DEVLIN,

United States Attorney, Attorney for Appellee.

[Endorsed]: No. 1196. U. S. Circuit Court,  
Southern District of California, Southern Division.

United States vs. Southern Pacific Railroad Co., et. al. Citation. Filed May 27, 1908. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Attorney for Defendants.

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*In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit.*

No. —.

THE UNITED STATES,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,

Defendants.

**Bill of Complaint.**

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States, by the Attorney General thereof, brings this, its bill of complaint, against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, residing therein, D. O. Mills and Homer S. King, trustees, residing in California, and the Central Trust Company of New York, trustee, a corporation organized and existing

under and by virtue of the laws of the State of New York, residing in New York.

And thereupon your orator complains and shows unto the Court that by the act of Congress approved July 27, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the State of California, and other states and territories, and to the whole of which said act your orators refer. (See United States Statutes, vol. 14, p. 292.)

Your orator further shows and alleges that said Atlantic and Pacific Railroad Company duly accepted said grant, and the terms and conditions of said act of July 27, 1866, within the time and manner therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the Commissioner of the General Land Office within the time and in the manner provided in said act, definitely establishing the whole thereof.



That said company filed maps of definite location designating that part of its said line in the State of California in said office of the Commissioner of the General Land Office in the year 1872, and as said plats or maps were so filed in the Interior Department they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid the United States withdrew from market and reserved all the odd-numbered sections of land in California within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and Commissioner of the General Land Office, said withdrawal and reservation of said lands were made then of record in the general land office and United States district land offices in California by proper plats, diagrams and maps, to all of which your orator refers.

Your orator further shows that by section 18 of said act of July 27, 1866, Congress authorized the Southern Pacific Railroad Company, a company incorporated under the laws of California, to connect with said Atlantic and Pacific Railroad, and to aid in its construction, made to said Southern Pacific Railroad Company a grant of lands upon the same terms, conditions and limitations as the grant to the said Atlantic and Pacific Railroad Company.

Your orator further alleges that by the joint resolution of Congress approved June 28, 1870 (16 Stat. 382), the Southern Pacific Railroad Company was authorized to construct its said line of railroad as near as may be upon the line of route indicated by the map filed by said company in the Interior Department on January 3, 1867, and by said resolution there was granted to said company lands to the extent and amount granted to the said company by said act of Congress of July 27, 1866, subject to all the conditions and restrictions provided for in the third section of said act.

Your orator further alleges and shows unto the Court, that in pursuance of said joint resolution and of said act approved July 27, 1866, said Southern Pacific Railroad Company filed in the office of the Commissioner of the General Land Office in the Department of the Interior, on the 7th day of January, 1885, its map designating and definitely locating its line of route under said acts, from the Colorado river on the eastern boundary of California, thence westerly to Mojave, which said map was thereafter finally approved by the Secretary of the Interior, as the map of definite location of said line of railroad of said company.

Your orator further shows unto the Court and alleges that by the act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas

Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (see U. S. Stats. vol. 16, pp 573-9), Congress incorporated and created the Texas Pacific Railroad Company and granted to said company to aid in the construction of said railroad a large amount of land in the State of California, and other states and territories, and to the whole of which said act your orator refers.

Your orator further shows to the Court that by section 23 of said act of Congress approved March 3, 1871, it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California by act of July 27, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

Your orator further alleges that the Southern Pacific Railroad Company, in pursuance of the pro-

visions of said section 23 of said act of March 3, 1871, did during the years from 1874 to 1878, inclusive, file in the office of the Commissioner of the General Land Office in the department of the Interior, in sections, its map designating and definitely locating its lines of route from Mojave in the State of California, thence via Los Angeles to the Colorado River, at or near the town of Fort Yuma, and which said map so filed in sections was definitely approved by the Secretary of the Interior as the map of definite location of said railroad.

Your orator alleges that said Atlantic and Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that by the act of Congress of July 6, 1886 (24 Stats. p. 123), all lands and rights to lands granted to and conferred upon said Atlantic and Pacific Railroad Company, within both granted and indemnity limits, and situated within the State of California, were forfeited and resumed to the United States, and said lands were by said act restored to the public domain.

Your orator further alleges that said lands within the thirty mile limits of and appertaining to the said Atlantic and Pacific Railroad Company were not granted to defendant Southern Pacific Railroad

Company by either or any of said acts of Congress, but, on the contrary, they were set apart and devoted by the United States to aid in the construction of said Atlantic and Pacific Railroad and were reserved from and excepted out of all grants made to said Southern Pacific Railroad Company, and neither said company nor any of the defendants herein have any right, title, or interest to said lands or any thereof, by virtue of any grant made to said Southern Pacific Railroad Company.

Your orator further alleges that the northeast quarter of the northeast quarter (NE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ ) of section seven (7), township six (6) north, range eight (8) west, San Bernardino base and meridian, California, is situated within the granted and place limits of the said grant to the Atlantic and Pacific Railroad Company, made by said act of July 27, 1866, and opposite to the unconstructed portion thereof, and is also situated within the indemnity limits, but outside of the granted limits of the grant made to the Southern Pacific Railroad Company by the act of March 3, 1871 .

That the west half of section thirty-one (31), township nine (9) north, range fifteen (15) west, San Bernardino base and meridian, California, is situated within the indemnity limits of said grant made to the said Atlantic and Pacific Railroad Company by said act of July 27, 1866, opposite to the uncon-

structed portion thereof, and is also situated within the indemnity limits and outside the granted limits of the said grant made to the Southern Pacific Railroad Company by said act of March 3, 1871.

Your orator further alleges that regardless of your orator's rights, the Southern Pacific Railroad Company, on November 10th, 1902, filed applications in the Interior Department, per indemnity list No. 93, to select said lands as lands inuring to said company under its said grant of March 3, 1871, as indemnity lands, and on June 30th, 1903, the officers of the Interior Department of the United States, inadvertently and through error and mistake, caused a patent of the United States, in one form, to be issued to said Southern Pacific Railroad Company, for the said lands.

Your orator further alleges that within the indemnity limits of each of said grants of 1871 and 1866 to said Southern Pacific Railroad Company, there still remain more than 100,000 acres of public land in odd sections properly subject to selection, but unselected by said company.

Your orator further alleges that the Southern Pacific Railroad Company claims and pretends that it has sold said lands or some of them to numerous persons, purchasers in good faith, as a part of its said grant, and whose rights to said lands under said purchases are protected by the acts of Congress of



March 3, 1887 and March 2, 1896, but your orator is unable to state what, if any, of said lands have been so sold, or at what price, or the names of such purchasers, or the dates of sales, said railroad company having exclusive knowledge of said matters and things, but your orator alleges that all of the moneys which said railroad company has received in payment for such lands or of any thereof, on account of such sales, are held in trust by said railroad company for your orator, to the extent of one dollar and twenty-five cents per acre.

Your orator admits and alleges that said lands and all of them are of the value of one dollar and twenty-five cents per acre and over.

Your orator further alleges, that in former suits between the United States and the Southern Pacific Railroad Company, and the other defendants herein, commenced in the United States Circuit Court for the Southern District of California, and carried by appeal to the Supreme Court of the United States, it has been finally and conclusively adjudged and determined by said courts and all of them as follows:

1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

2. That upon the acceptance of those maps by the Land Department, the rights of that company in

the lands so granted, attached, by relation, as of the date of the act of 1866; and

3. That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain. (See 168 U. S. 1, 66.)

And it was further, finally, and conclusively adjudged by said Court in said cause, that all of the lands and rights to lands granted to said Atlantic and Pacific Railroad Company by said act of Congress, were forfeited to the United States by said act approved July 6, 1886, for the use and benefit of the United States and not for the use or benefit of said Southern Pacific Railroad Company.

And it was further, finally and conclusively adjudged in said causes that said Southern Pacific Railroad Company could not and did not acquire under its said grant of March 3, 1871, either as granted lands or as indemnity lands, any lands or rights to lands falling within either the granted limits or indemnity limits of said grant to said

Atlantic and Pacific Railroad Company. (See 168 U. S. 1, 66.)

And it was further finally and conclusively adjudged in said causes that said Southern Pacific Railroad Company, in pursuance of said act of July 27, 1866, and said joint resolution of June 28, 1870, did file in the office of the Commissioner of the General Land Office in the Department of the Interior, on the 7th day of January, 1885, its map designated and definitely locating its line of route under said acts, from a point near Needles on the Colorado River westerly to Mojave in California, and that the Atlantic and Pacific Railroad Company in the year 1872 did file in the office of the Commissioner of the General Land Office in the Department of the Interior, its map designating and definitely locating its line of route under said act of July 27, 1866, from Springfield, Missouri, westerly to the Pacific Ocean at San Buenaventura, and that the United States was and is the owner by title absolute and in fee simple to an equal undivided moiety in all alternate sections of land designated by odd numbers within the place or granted limits of the grant of said Atlantic and Pacific Railroad in California, so far as those limits conflict with like limits of said grant of July 27, 1866 to said Southern Pacific Railroad Company, excepting those lands the title to which was in former litigations between the United

States and the Southern Pacific Railroad Company adjudged to belong to the United States. (See 183 U. S. 519, 536.)

Your orator further alleges that it was in said cause further, finally and conclusively adjudged, that the map filed by said Southern Pacific Railroad Company in the general land office in the year 1871, between Tehachapi Pass and the Colorado River at or near Fort Yuma, in pursuance of said act of March 3, 1871, was and is a map of general route only, and not a map of definite location. (See 146 U. S. 570, 619.)

Your orator further alleges and shows that said several suits between United States and the defendants herein, were numbered on the docket of the United States Circuit Court for the Southern District of California, as follows: Numbers 68, 88, 177, 178, 184 and 600, and that the decisions and opinions upon appeal, by the Supreme Court of the United States, are reported as follows: 146 United States Reports, pages 570 to 619, 168 United States Reports, pages 1 to 67, 183 United States Reports, pages 519 to 535, to which your orator refers.

Your orator further alleges that the lands and rights to lands granted to defendant Southern Pacific Railroad Company by section 18 of the act of Congress of July 27, 1866, and by joint resolution of June 28, 1870, and by section 23 of the act of

March 3, 1871, were all granted upon the same terms, conditions and restrictions as those granted to the Atlantic and Pacific Railroad Company by the said act of July 27, 1866, and that by section 20 of the said act of July 27, 1866, Congress expressly reserved the right and power to alter, amend or repeal that act.

Your orator further alleges that in pursuance of the right and power of Congress to alter, amend, or repeal the said acts granting lands to defendant Southern Pacific Railroad Company and the said Atlantic and Pacific Railroad Company that the act of Congress approved March 3, 1887 (24 Stat. 556) was passed, to which your orator refers.

Your orator further alleges that in further pursuance of said right and power to alter, amend and repeal said acts by Congress, the act approved March 2, 1896, (29 Stat. 42) was passed further providing that as to lands erroneously patented to any railroad company that,

“No patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed.”

Your orator further alleges that by section 2 of said act of March 2, 1896, it was provided as follows:

“Sec. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Sec-

retary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person, or association of persons, for whose benefit the certification was made for the value of said land, which in no case shall be more than the minimum government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided."

And to the whole of said acts your orator refers.

Your orator further alleges that the defendant Southern Pacific Railroad Company duly accepted the terms and conditions of the said acts of Congress of March 3, 1887 and March 2, 1896, such legislation being greatly in the interest of said company, and by



virtue of the provisions of the said acts has in numerous suits between the United States and said company, interposed by plea, answer and otherwise, defenses to suits brought to vacate patents for lands erroneously issued to said company by alleging that it had sold such lands to bona fide purchasers whose titles had been confirmed by said acts, and in numerous decrees entered in such suits has secured orders and decrees confirming the title of such purchasers or dismissing the bill as to such lands, and that said company by reason thereof, ought to be and is estopped from denying its acceptance of said acts.

Your orator further shows and alleges that in determining what of said lands have been sold by said railroad company to bona fide purchasers and as to what payments have been made and by whom and as to what has been received by said company, upon such sales and as to what still remains unpaid and as to what amount is owing to your orator by said railroad company, involves great complexity and that an accounting is necessary between your orator and said railroad company, and a discovery as hereinafter prayed is required.

Wherefore, your orator having no plain, speedy or adequate remedy at law, prays that the Court will quiet and determine the title of your orator to all of the said lands, and will adjudge that your orator is the owner of said lands by title in fee

simple, and that the defendants have no right, title, interest or estate therein or thereto, and that they be enjoined from claiming or asserting any right, interest, estate or title therein or thereto, especially any such claimed to exist under said act of Congress of March 3, 1871.

Your orator further prays that the Court will by a proper decree vacate and annul all patents issued by the United States to said Southern Pacific Railroad Company, for all of the said lands.

Your orator further prays that the Court will determine what of said lands have been sold by said Southern Pacific Railroad Company, and what thereof are held by bona fide purchasers, and what sums of money have been received by defendant Southern Pacific Railroad Company for said lands, if any, and in case it be found that any of said lands have been sold by said railroad company to bona fide purchasers, that the Court wil adjudge that said railroad company holds the moneys received for said lands in trust for your orator to the extent of \$1.25 per acre, and that your orator have a lien for such sums upon all moneys or other property in the hands of said railroad company, received from the sale of such lands, and that said railroad company be required to account to your orator therefor.

Your orator prays for such other and further re-

lief as to the Court may seem equitable, and for costs of this suit.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this honorable court, directed to the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York as trustee, commanding them, and each of them, at a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your Honors in this honorable court, and then and there to answer (but not under oath except as to the interrogatories hereto attached, answers under oath being hereby expressly waived except as to such interrogatories) all and singular the premises and to stand to, perform and abide such order and decree therein, as to your honors shall seem meet.

Your orator requires defendant Southern Pacific Railroad Company to show to the best of its knowledge, information and belief, and after an examination of its books and records, the following:

(1) Said company is required to state what sales or contracts to sell it has made of each of the tracts of land, with the name of the purchaser of each tract, and the name of each assignee or transferee of such tracts or of any contract given therefor by said company.

(2) The date of each such sale or contract to sell and the character of the instrument in writing, if any, given by said company to each such purchaser.

(3) The agreed purchase price of each such tract.

(4) The date and amount of each payment of principal and of interest upon each of such sales made by such several purchasers to said company.

And your orator will ever pray.

WM. H. MOODY,

Attorney General.

L. H. VALENTINE,

United States Attorney.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

Dated.

[Endorsed]: No. 1196. In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit. United States vs. Southern Pacific Railroad Co. et al. Bill of Complaint. Joseph H. Call, Special Assistant U. S. Attorney. Filed Jul. 17, 1905, at 10:45 A. M. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the Circuit Court of the United States, Southern  
Division, Southern District of California, Ninth  
Circuit.*

No. —.

THE UNITED STATES,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, and Others,

Defendants.

**Amended Bill of Complaint Filed July 17, 1905.**

The United States, in pursuance of the rules of this Honorable Court, files the following amendment to its bill of complaint in the above-entitled cause, by adding to said bill the following, to be inserted at the end of line 8, page 11, of said bill, and immediately preceding the prayer for relief, to wit:

“Your orator further alleges that more than ninety days prior to the filing of this bill of complaint the Secretary of the Interior, on behalf of the United States, made a demand upon defendant, Southern Pacific Railroad Company, for a relinquishment and reconveyance to the United States of the foregoing

described lands, so erroneously patented, which demand was then and there refused by said defendant."

Your orator seeks like process and relief as already sought in its bill of complaint, and waives answer under oath.

L. H. VALENTINE,  
United States Attorney.

JOSEPH H. CALL,  
Special Assistant U. S. Attorney.

[Endorsed]: Copy. No. 1196. In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit. United States vs. Southern Pacific Railroad Co. et al. Amendment to Bill of Complaint. Joseph H. Call, Special Assistant U. S. Attorney. Filed Jul. 17, 1905, at 10:50 A. M. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

To the Marshal of the United States for the Northern District of California.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,  
Southern District of California, Southern Division.*

IN EQUITY.

The President of the United States of America,  
Greeting, to the Southern Pacific Railroad  
Company, a Corporation, D. O. Mills and Homer  
S. King, Trustees:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles on the 4th day of September, A. D. 1905, to answer a bill of complaint and amendment to bill of complaint exhibited against you in said court by the United States and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this, 17th day of July in the year of our Lord one thousand

nine hundred and five and of our Independence the one hundred and thirtieth.

[Seal]

WM. M. VAN DYKE,  
Clerk.

By Chas. N. Williams,  
Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court  
U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of September next, at the clerk's office of said Court pursuant to said bill and amendment to bill of complaint; otherwise the said bill and amendment will be taken pro confesso.

WM. M. VAN DYKE,  
Clerk.

By Chas. N. Williams,  
Deputy Clerk.

Clerk's Office; Los Angeles, California.

United States Marshal's Office,  
Northern District of California.

I hereby certify, that I received the within writ on the 21st day of July, 1905, and personally served the same on the 21st day of July 1905, on the Southern Pacific Railroad Company et al., by delivering to and leaving with N. T. Smith, treasurer of said Southern Pacific Railroad Company, said defendant named



therein, personally, at the county of San Francisco in said district, a copy thereof.

San Francisco, July 21, 1905.

JOHN H. SHINE,  
U. S. Marshal.  
By R. DeLancie,  
Office Deputy.

[Endorsed]: Original No. 1196 U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States vs. Southern Pacific Railroad Company, et al. Subpoena. Filed, Jul. 24, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

At a stated term, to wit the July Term, A. D. 1905, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Monday, the seventeenth day of July, in the year of our Lord one thousand nine hundred and five—Present: The Honorable OLIN WELLBORN, District Judge.

THE UNITED STATES,

Complainants,

vs

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. MILLS and HOMER S. KING, as Trustees, and THE CENTRAL TRUST COMPANY OF NEW YORK (a Corporation), as Trustee,

Defendants.

**Order Requiring Certain Defendants to Appear.  
etc.**

At a stated term of the Circuit Court of the United States, for the Southern District of California, Southern Division, begun and holden at the city of Los Angeles, State of California, on the 10th day of July, A. D. 1905, the Honorable Olin Wellborn, United States District Judge for the Southern District of California, presiding, on the 17th day of July, A. D.

1905, in open court Joseph H. Call, Esq., Special Assistant United States Attorney, having moved the Court for an order to require certain defendants in the above-entitled suit to appear, plead and answer within a time to be specified, and hereinafter mentioned, and it appearing to the Court that said defendants in the above-entitled suit, to wit: D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York, a corporation, trustee, are not inhabitants of and neither of them is an inhabitant of, nor can they or either of them be found within this judicial district, the Southern District of California, nor within the State of California, and that they have not and neither of them has voluntarily appeared in this suit.

And it further appearing to the Court that this suit is one to enforce a claim to certain real estate described in the bill of complaint and within this judicial district.

And it further appearing that there is no person or persons in possession or charge of said real estate,

Now, therefore, it is ordered and adjudged that said defendants D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York, trustee, be, and they hereby are directed to appear in this court in the city of Los Angeles, State of California, on or before the first Monday of September, A. D. 1905, and to plead, answer or demur

to the bill of complaint in said suit on or before the first Monday in October, A. D. 1905.

And it is further ordered and adjudged that a copy of this order, duly certified by the clerk of this Court may be served upon each of the said defendants last named wherever they may be found.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court on the 17th day of July, A. D. 1905, in the cause entitled The United States, Complainants, vs. The Southern Pacific Railroad Company (a Corporation), et al., Defendants, No. 1196, Southern Division, and remaining of record therein.

Attest my hand and the seal of said Circuit Court this 18th day of July, A. D. 1905.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy.

I hereby certify, that on the 25 day of July, 1905, at the city of New York, in my district, I served the within certified copy of order upon the within-named defendant Central Trust Company of New York by exhibiting to George Bertin, as secretary of said Co., at 54 Wall St. N. Y. City, the within certified copy,

and at the same time leaving with him a copy thereof.

I hereby further certify, that on the 25 day of July, 1905, at the city of New York, in my district, I served the within certified copy of order upon the within-named defendant D. O. Mills by exhibiting to Ogden Mills, his son, who accepted service for him at #15 Broad St., N. Y. City, the within certified copy, and at the same time leaving with him a copy thereof. The within named D. O. Mills is in Europe.

WM. HENKLE,

United States Marshal, Southern District of New York.

Dated Jul. 25, 1905. (J. B. B.)

[Endorsed]: No. 1196. U. S. Circuit Court, Ninth Circuit, Southern District of California. Southern Division. The United States vs. The Southern Pacific Railroad Company (a Corporation), and others. Certified Copy Order Requiring Certain Defendants to Appear, etc. Filed, Jul. 29, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

**Alias Subpoena to Southern Pacific Railroad Com-  
pany et al.**

To the Marshal of the United States for the North-  
ern District of California.

**UNITED STATES OF AMERICA.**

*Circuit Court of the United States, Ninth Circuit,  
Southern District of California, Southern Division*

**IN EQUITY.**

The President of the United States of America,  
Greeting, to the Southern Pacific Railroad Com-  
pany, a Corporation, D. O. Mills and Homer S.  
King, Trustees:

You are hereby commanded, that you be and ap-  
pear in said Circuit Court of the United States afore-  
said, at the courtroom in Los Angeles on the 4th day  
of September, A. D. 1905, to answer a bill of com-  
plaint and amendment to bill of complaint exhibited  
against you in said court by the United States and to  
do and receive what the said Court shall have con-  
sidered in that behalf. And this you are not to omit,  
under penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FUL-  
LER, Chief Justice of the United States, this 24th  
day of July in the year of our Lord one thousand

nine hundred and five and of our Independence the one hundred and thirtieth.

[Seal]

WM. M. VAN DYKE,  
Clerk.

By Chas. N. Williams,  
Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court  
U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of September next, at the clerk's office of said Court pursuant to said bill and amendment to bill of Complaint; otherwise the said bill and amendment will be taken pro confesso.

WM. M. VAN DYKE,  
Clerk,

By Chas. N. Williams,  
Deputy Clerk.

Clerk's Office, Los Angeles, California.

United States Marshal's Office,  
Northern District of California.

I, hereby certify, that I received the within writ on the 2d day of August, 1905, and personally served the same on the 2d day of August, 1905, on Homer S. King., as trustee, by delivering to and leaving with Homer S. King, said trustee, and one of said defendants named therein, personally, at the city and

county of San Francisco, in said district, a copy thereof.

JOHN H. SHINE,  
U. S. Marshal.  
By E. A. Morse,  
Office Deputy.

San Francisco, August 2d, 1905.

[Endorsed]: Original. No. 1196. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. In Equity. The United States vs. Southern Pacific Railroad Co., et al. Alias Subpoena. Filed, Aug. 4, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

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*In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit.*

No. 1196.

THE UNITED STATES,

Plaintiff,

vs

THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,

Defendants.



**Amendment to Bill of Complaint Filed August 30,  
1905.**

The United States hereby amends its bill of complaint in this cause, by adding to said bill, on page 10, at the end of line 16, after the words "orator refers" and before the words "your orator," the following allegation:

Your orator further alleges, upon information and belief, that the defendants D. O. Mills and Homer S. King, as trustees, and Central Trust Company, of New York, as trustee, claim to have and to hold a lien upon the lands hereinbefore described, as trustees, in virtue of a mortgage or mortgages executed by the Southern Pacific Railroad Company to secure certain negotiable bonds, which said defendants claim are outstanding and held by bona fide purchasers, but your orator has no knowledge or information as to the amount of bonds so claimed to be secured, nor the date of issuance of the same, and your orator alleges that all such claims to a lien and mortgage upon said lands are unfounded, and that in fact said defendants have no valid lien or mortgage upon, or claim to, said lands, or any part thereof.

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United States Attorney.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

[Endorsed]: No. 1196. In the Circuit Court of the United States, Southern District of California, Ninth Circuit. The United States, Plaintiff, vs. The Southern Pacific Railroad Company, and Others, Defendants. Amendment to Bill of Complaint. Filed, Aug. 30, 1905. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Assistant U. S. Attorney.

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*United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.*

Case No. 1196.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,  
and Others,

Defendants.

**Answer of Southern Pacific Railroad Company et al.**

The joint and several answer of the defendants Southern Pacific Railroad Company, Homer S. King, trustee, and Central Trust Company of New York, trustee, to plaintiff's bill of complaint as amended, in the above-mentioned case.

The above-named defendants, now and at all times saving unto themselves and each of them all and all manner of benefit or advantage of exception or other-

wise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto or to so much thereof as they are advised it is material or necessary to make answer to, jointly and severally answering the said bill of complaint admit, deny and allege as follows:

1st. Admit that by the Act of Congress referred to in the bill of complaint, approved July 27th 1866, Congress incorporated the Atlantic & Pacific Railroad Company, and made a grant unto that company of a large amount of lands in the State of California.

2d. Allege that they have no information or knowledge about such matters, and on that ground deny that the Atlantic & Pacific Railroad Company duly accepted the said grant, or duly accepted the terms or conditions of the said Act of July 27th, 1866, within the time and manner required, or at all; and on the same ground deny that the Atlantic & Pacific Railroad Company did designate on plats or maps the whole of its, or the whole of any, line of route under said act definitely locating the same from Springfield, Missouri, by way of the points and places named in the said act to the Pacific Ocean at San Buenaventura or elsewhere; and on the same ground deny that the Atlantic & Pacific Railroad Company did file such, or any, plats or maps designating said,

or any, line of route (except as hereinafter expressly admitted) in the office of the Commissioner of the General Land Office, within the time or in the manner provided in said act, definitely or otherwise establishing the whole or any part thereof.

3d. Admit that in the year 1872, the Atlantic & Pacific Railroad Company filed in the general land office several maps which together designated a line of railroad route in the State of California; admit that those maps were, during the year 1872, approved by the Secretary of Interior as maps of definite location; admit that thereafter (but not thereupon, as it said in the bill of complaint) the proper officers of the United States withdrew from market all odd sections of public land in the State of California lying within twenty miles of the said line of route, and including the lands described in the bill of complaint.

4th. Admit that by section 18 of the said act of July 27th, 1866, Congress authorized the Southern Pacific Railroad Company, a company incorporated under the laws of the State of California, to connect with the Atlantic & Pacific railroad at such point near the boundary line of the State of California as the Southern Pacific Railroad Company deemed most suitable for a railroad to San Francisco; and admit that, to aid in construction of the railroad which it was so authorized to construct,

the said section 18 made unto the said Southern Pacific Railroad Company a grant of lands similar to, and subject to the same conditions and limitations as, the grant made by the same Act to the Atlantic & Pacific Railroad Company.

5th. Deny that it is wholly true, in manner and form as set forth in the bill of complaint, that by the joint resolution of Congress approved June 28th, 1870, the said Southern Pacific Railroad Company was authorized to construct its said line of railroad as near as may be upon the line of route indicated by the map filed by the said company in the Interior Department on January 3d, 1867, and by the said joint resolution there was granted to the said company lands to the extent and amount granted to it by the said Act of July 27th 1866; and allege that the true facts and particulars as to such matters and things are as follows: On January 3d, 1867, the said Southern Pacific Railroad Company filed in the Interior Department a map designating a line of route for the railroad it was authorized by the said act of July 27th, 1866 to construct. A portion of the line shown on that map between Needles and Mojave was along the same general course of, and contiguous to, a line of route thereafter designated by the Atlantic & Pacific Railroad Company. In that way a question arose in the Department of Interior as to whether the Southern Pacific Rail-

road Company was authorized by the act of July 27th, 1866, to construct a railroad long the said portion of line of route designated on the map of January 3d, 1867; and so it was that Congress, by the joint resolution of June 28th, 1870, accepted and approved the line designated by the said map of January 3d, 1867 as the line contemplated for the said Southern Pacific Railroad Company by the act of July 27th, 1866, and declared that the said Southern Pacific Railroad Company might construct its railroad as near as may be along that line, and in aid thereof receive the land grant provided by the said act of July 27th, 1866.

6th. Admit that said Southern Pacific Railroad Company filed in the Department of Interior maps designating and definitely locating its line of railroad from Needles to Mojave; and admit that said maps were finally approved by the Secretary of Interior as such maps. But defendants allege that said maps were so filed in five several sections, the earliest thereof on January 31st 1878, the latest thereof on December 31st, 1884, and that the said three other maps were so filed on dates intermediate January 31st, 1878 and December 31st, 1884; allege that each and all of said maps were finally approved and accepted by the Secretary of Interior on and before January 7th, 1885; and defendants say it is not true, as alleged in the bill of complaint, that all of said maps were filed in the office of the Commis-

sioner of the General Land Office on January 7th, 1885, nor is it true as alleged in the bill of complaint that the Secretary of Interior did not finally approve those maps until after January 7th, 1885.

7th. Admit and allege that section 23 of the act of Congress approved on March 3d, 1871, referred to and quoted from on pages three and four of the bill of complaint, provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company or any other railroad company."

8th. Admit that the said Southern Pacific Railroad Company filed in the Department of Interior, and the Secretary of Interior finally approved, maps in five several sections definitely locating the entire

railroad it was authorized by section 23 of the said act of March 3d, 1871 to construct; and allege that the earliest of said maps was so finally approved on May 11th, 1874, that the latest thereof was finally approved on January 31st, 1878, and that the said three other maps were so finally approved on dates intermediate May 11th, 1874 and January 31st, 1878.

9th. Admit that the Atlantic & Pacific Railroad Company did not construct any railroad in the State of California; and admit that by act of Congress approved July 6th, 1886, referred to in the bill of complaint, all lands in California granted to the Atlantic & Pacific Railroad Company, within both granted and indemnity limits thereof, were forfeited and resumed to the United States, and restored to the public domain.

10th. Deny that said lands within the thirty mile limits of and appertaining to the said Atlantic & Pacific Railroad Company were not granted to the Southern Pacific Railroad Company by either or any of said acts of Congress; deny that they were set apart and devoted by the United States to aid in the construction of said Atlantic & Pacific Railroad; deny that they were reserved from or excepted out of all grants made to the Southern Pacific Railroad Company; and deny that neither said company nor any of the defendants herein have any right,



title or interest to said lands or any thereof by virtue of any grant made to the said Southern Pacific Railroad Company. In this behalf defendants allege that a large portion of the odd-numbered sections of land lying within twenty miles and thirty miles of the line designated on the maps accepted and approved as definitely locating the railroad which the said act of July 27th, 1866, authorized the Atlantic & Pacific Railroad Company to construct in California, were granted to the Atlantic & Pacific Railroad Company and Southern Pacific Railroad Company in equal undivided moieties, and other large portions thereof were granted solely to the said Southern Pacific Railroad Company, and other portions thereof have been duly and properly selected by the said Southern Pacific Railroad Company, under direction of the Secretary of Interior, as indemnity lands, by and in virtue of the said acts of Congress.

11th. Admit that the northeast quarter of northeast quarter (NE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ ) of section seven (7) in township six (6) north, range eight (8) west, San Bernardino base and meridian, is within twenty miles on one side of the line designated on the said maps which were accepted and approved as definitely locating the railroad which the said act of Congress of July 27th, 1866, authorized the Atlantic & Pacific Railroad Company to construct in California, and opposite the unconstructed portion thereof; and

admit that the said land is also within the indemnity limits and outside the primary limits of the land grant made unto the Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871.

12th. Admit that the west half (W.  $\frac{1}{2}$ ) of section thirty-one (31), in township nine (9) north, range fifteen (15) west, San Bernardino base and meridian, is situated within thirty miles on one side of but more than twenty miles from the line designated on the said maps which were accepted and approved as definitely locating the railroad which the said act of Congress of July 27th, 1866, authorized the Atlantic & Pacific Railroad Company to construct in California, and opposite the unconstructed portion thereof; and admit that the said land is also within the indemnity limits and outside the primary limits of the land grant made unto the Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871.

13th. Admit and allege that on November 10th, 1902, the Southern Pacific Railroad Company filed applications in the Interior Department, per indemnity list No. 93 and under direction of the Secretary of Interior, to select the lands described in the "11th" and "12th" paragraphs of this answer as indemnity lands, under and in pursuance of the indemnity provisions of the said act of Congress of

March 3d, 1871; admit and allege that on June 30th, 1903, the proper officers of the United States issued a patent, in due form, unto said Southern Pacific Railroad Company, conveying title in fee simple to and for the said lands; but deny that the said patent was issued inadvertently, through error, or mistake; and allege that the said patent was duly, intentionally, and lawfully issued, wholly without error or mistake, for lands for which the said company was duly and lawfully entitled to receive such patent under and in pursuance of its said indemnity selection thereof.

14th. Admit that within the indemnity limits of each of said grants of 1866 and 1871 to the said Southern Pacific Railroad Company, there still remain more than one hundred thousand acres of public lands in odd sections properly subject to selection but unselected by said company. In this behalf defendants allege, on information which they believe to be true, that all lands realized or to be realized within primary limits, together with all lands patented, selected, subject of selection or to become subject of selection, within indemnity limits of the grant made unto the said Southern Pacific Railroad Company by the said act of March 3d, 1871, do not equal or make the quantity of land granted to the said company by the said act of March 3d, 1871; and further allege that the said Southern

Pacific Railroad Company has not received, the lands in this suit included, the quantity of land granted to it by the said act of March 3d, 1871.

15th. Admit and allege, that the defendants D. O. Mills and Homer S. King, as trustees, and Central Trust Company of New York, as trustee, each claims to have and to hold a lien upon the lands hereinbefore described, as trustees, under and by virtue of the mortgages hereinafter set forth.

16th. Allege that on or about April 1st, 1875, by instrument in writing, bearing that date, the said Southern Pacific Railroad Company duly made, executed and delivered unto the defendant D. O. Mills and one Lloyd Tevis, as trustees, a mortgage covering all lands described in the bill of complaint herein, with other lands, to secure payment of negotiable bonds issued and to be issued as in the said mortgage provided; under the provisions of which mortgage negotiable bonds were duly issued and sold to purchasers in good faith for full value in money paid, without notice or knowledge of the said Atlantic & Pacific grant, or that the United States had or made any claim to the lands described in the bill of complaint herein; of which lands, so issued and sold, there are, and at the time this suit was brought were, outstanding and unpaid, bonds exceeding sixteen million dollars in value. The said Homer S. King, trustee, named as one of the de-

fendants in and to this suit, has been duly substituted as such trustee under the said mortgage, in place and stead of the said Lloyd Tevis, trustee.

17th. Allege that on or about September 15th, 1893, by instrument in writing bearing that date, the said Southern Pacific Railroad Company duly made, executed and delivered unto the defendant Central Trust Company of New York, a corporation, as trustee, a second mortgage or deed of trust covering all lands described in the bill of complaint herein, with other lands, to secure payment of negotiable bonds issued and to be issued as in the said mortgage or deed of trust provided; under the provisions of which mortgage or deed of trust negotiable bonds were duly issued and sold to purchasers in good faith, for full value in money paid, without notice or knowledge of the said Atlantic & Pacific grant or that the United States had or made any claim to the lands described in the bill of complaint herein; of which bonds, so issued and sold, there are, and at the time this suit was brought were, outstanding and unpaid, bonds exceeding twenty-seven million dollars in value.

18th. Admit and allege that on July 23d, 1885, the said Southern Pacific Railroad Company sold, under contract for deed No. 4722 but for the full sum of three hundred and eight (308.00) dollars, cash in hand that day paid, the west half (W. 1/2) of section thirty-one (31), in township nine (9) north,

range fifteen (15) west, San Bernardino meridian, containing three hundred and eight (308.00) acres, unto the Atlantic & Pacific Fibre Importing and Manufacturing Company, a corporation; and by instrument in writing bearing date January 27th, 1893, the said Atlantic & Pacific Fibre Importing and Manufacturing Company duly assigned the said contract, and its interest in the lands therein described, unto Jackson Alpheus Graves; but deny that the, or any, moneys received from such sale, are or at any time were, held by said company or any of these defendants, in trust for the United States, or subject to a lien in favor of the United States, to any extent whatever.

19th. Admit and allege that the mortgages, sale and assignment set forth in the "16th," "17th" and "18th" subdivisions of this answer, was and were each made to a corporation or person who purchased in good faith, for full value of the lands, without notice that the lands purchased were at any time within limits of the Atlantic & Pacific grant other than such presumptive notice thereof as the law gave unto all persons; but deny that the said Southern Pacific Railroad Company claims or pretends that it has sold said lands, or some of them, to numerous persons or otherwise than as hereinbefore set forth, purchasers in good faith, as a part of its said grant, and whose rights to said lands are protected by the acts of Congress of March 3d,

1887, or March 2d, 1896; and further deny that the land so sold is or at any time was, worth one dollar and twenty-five cents per acre, or any sum in excess of one dollar per acre.

20th. Admit and allege that in the former suits referred to in the bill of complaint, brought by the United States against the Southern Pacific Railroad Company and others, it was finally and conclusively adjudged by the Supreme Court of the United States as is reported in volume 146 of United States Reports, on pages 570 to 619, volume 168 of United States Reports, on pages 1 to 67, and volume 183 of United States Reports, on pages 519 to 535; but deny that it has been finally, conclusively or otherwise, determined in said suits or in any suits, as is alleged and set forth in the bill of complaint. Defendants refer to the said United States Reports in support of the denials of this paragraph, and to truly show unto this Court what the Supreme Court of the United States did decide in those cases.

21st. Admit that Congress expressly reserved the right and power to alter, amend or repeal the said act of July 27th, 1866, by the following provision in section 20 thereof: "And be it further enacted, That the better to accomplish the object of this act; namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working or-

der, and to secure to the government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend or repeal this act." But defendants allege that the said Southern Pacific Railroad Company constructed and fully equipped the railroad contemplated by the said act of July 27th, 1866, and the same was finally accepted by the United States prior to the year 1885; and that the said company constructed and fully equipped the railroad contemplated by the said act of March 3d, 1871, and the same was finally accepted by the United States prior to the year 1879; and these defendants are advised and believe, and so allege, that all power of Congress to alter, amend or repeal the said act of July 27th, 1866 or the said act of March 3d, 1871 or any provision of either thereof relating to the land grants or indemnity provisions therein made or provided for the said Southern Pacific Railroad Company, ceased and determined upon final acceptance of the said railroads, respectively, as aforesaid, if not theretofore.

22d. Deny that the act of Congress approved March 3d, 1887, or the act of Congress approved on March 2d, 1896, referred to in the bill of complaint, was or were passed in pursuance of the, or any, right



or power of Congress to alter, amend or repeal the said act of July 27th, 1866 or the said act of March 3d, 1871, or any provision or either of said acts relating to the land grants or indemnity provisions therein made and provided for the said Southern Pacific Railroad Company; and these defendants are advised and believe that neither the said act of March 3d, 1887, or the said act of March 2d, 1896, was or were intended to, did, or could, alter, amend, or repeal the said act of July 27th, 1866, of the said act of March 3d, 1871, or any provision of either thereof relating to the land grants or indemnity provisions therein made and provided for the said Southern Pacific Railroad Company.

23d. Admit and allege that the act of Congress approved on March 2d, 1896, referred to in the bill of complaint, provides as is published in the United States Statutes at Large, volume 29, pages 42 and following, to which defendants refer; but deny that the said act provides as is set forth in the bill of complaint, in the manner and form therein stated.

24th. Deny that the said Southern Pacific Railroad Company, these defendants or any of them, duly or otherwise accepted the terms or conditions of the said act of March 3d, 1887, or the terms or conditions of the said act of March 2d, 1896; deny such legislation is greatly, or at all, in the interest of said company, and in this behalf allege that in

so far as those acts seek to confirm the title of certain purchasers of land at cost and expense of railroad companies, and seek to fix a price to be paid by such companies unto the United States the provisions of those acts, and each of them, are largely against the interests and lawful rights of said company and these defendants; admit that in numerous suits between the United States and the said Southern Pacific Railroad Company, the said company has by plea, answer and otherwise, alleged and shown sales of land to persons whose title is declared confirmed by the said act of March 2d, 1896; admit that in pursuance of proofs of such sales, decrees have been entered adjudging confirmation of land titles by the said act of March 2d, 1896, held by purchasers from said company; but deny that the said company, or these defendants, is or are thereby, or for any cause, estopped from denying acceptance of the said acts, or either of them. In this behalf defendants allege that they are informed and believe that the provisions of said acts declaring a class of persons therein specified to be bona fide purchasers, and the provisions of the said act of March 2d, 1896, declaring certain titles confirmed, are each and all gratuitous and absolute provisions made by Congress, wholly independent of other provisions of said acts purporting to impose specified costs and charges against railroad companies, and purporting to create

and provide right of suit or action to recover such costs and charges; and defendants are advised and believe, and so allege, that the said acts, in so far as they seek or purport to impose costs or charges against railroad companies, or to provide right of suit or action to recover such costs or charges, are unjust, unlawful, and not properly enforceable.

25th. Deny that in determining what lands described in the bill of complaint have been sold to bona fide purchasers, or in determining what payments have been made or by whom made or what has been received by or remains unpaid to said company upon such sales, or what amount (if any) is owing to the United States, great or any complexity is involved; and allege that such determinations, each and all, present a simple question in elementary arithmetic, without complexity, counterclaim or offset. In this behalf defendants allege that they are advised and believe that if the United States has any claim or demand whatsoever against them or either of them for the recovery of money, arising or to arise out of any matter or thing set forth in the bill of complaint, the United States has a plain, speedy and adequate remedy at law, in assumpsit, for recovery of the same.

26th. And these defendants deny all and all manner of matter, cause or thing in plaintiff's bill of complaint contained, material or necessary for them

to make answer to and not herein well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of any of them (these defendants). All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this Honorable Court may direct; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. SINGER, Jr.,

Attorney for the Defendants.

WM. F. HERRIN and

ALBERT F. RATHBONE,

Counsel for the Defendants.

State of California,

City and County of San Francisco,—ss.

J. L. Willcutt makes solemn oath and says: I am secretary of the Southern Pacific Railroad Company, one of the defendants in the foregoing suit or action. In so far as the foregoing answer relates or refers to acts or things done or performed by me as such secretary, the same is true of my own knowledge; and as to all other matters and things therein set forth, I believe the same to be true.

J. L. WILLCUTT.

Subscribed and sworn to before me on September 26th, 1905.

[Seal]

E. B. RYAN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

My commission will expire Feb'y. 20th, 1906.  
State of California,  
City and County of San Francisco,—ss.

Fred W. Haswell, being duly sworn, deposes and says: I am chief clerk in the office of Wm. Singer, Jr., room 1127, Merchants' Exchange Building, city of San Francisco, State of California, and over twenty-one years of age. On this September 28th, 1905, I deposited in the United States mail, in the city of San Francisco, State of California, an envelope addressed to "Hon. Joseph H. Call, Tajo Building, Los Angeles, Cal'a," postage prepaid, containing a full, true and correct copy of the attached "Answer of Defendant Southern Pacific Railroad Company et al.," in case No. 1196, U. S. Circuit Court, Southern District of California, Southern Division.

F. W. HASWELL,

Subscribed and sworn to before me on September 28th, 1905.

[Seal]

E. B. RYAN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

My commission will expire Feb'y 20th, 1906.

[Endorsed]: No. 1196. U. S. Circuit Court, Southern District of California, Southern Division. United States, vs. Southern Pacific Railroad Co., et al. Answer of Defendant Southern Pacific Railroad Company, et al. Filed Sep. 29, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Room 1127, Merchants' Exchange, San Francisco, Cal., Atty. for Defendants.

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*In the United States Circuit Court, Southern District  
of California, Southern Division, Ninth Circuit.*

No. 1196.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
and Others,

Defendants.

**Replication.**

Replication of the United States to the answer of Southern Pacific Railroad Co., Homer S. King, trustee, and Central Trust Co., trustee, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said

bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,

Special Asst. U. S. Atty., and of Counsel for Complainant.

[Endorsed]: No. 1196. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co., et al., Defendants. Due Service Hereof by Copy this made by Mail. J. H. Call, Solicitor for Plff. Replication of U. S. to Ans. of S. P. R. R. Co. et al. Filed Sep. 29, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special Asst. U. S. Atty.

*In the Circuit Court of the United States, Southern  
Division, Southern District of California, Ninth  
Circuit.*

No. —.

THE UNITED STATES,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, and Others,

Defendants.

**Stipulation Relative to Filing Amendment to Bill of  
Complaint, etc.**

It is hereby stipulated that the complainant in the above-entitled cause may file an amendment to the bill of complaint herein, bringing in Jackson Alpheus Graves as a party defendant.

It is further stipulated that the answer of the Southern Pacific Railroad Company and others, on file in this cause, shall stand as the answer of Jackson Alpheus Graves, with the same effect as if his name had been specifically mentioned in said answer as a party answering the bill.



It is further stipulated that the replication of the United States to the answer shall stand to the answer of Jackson Alpheus Graves.

Dated this second day of November, 1905.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

WM. SINGER, Jr.,

Attorney for Defendants.

[Endorsed]: No. 1196. In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit. United States vs. Southern Pacific Railway, et al. Stipulation. Filed Nov. 23, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special Assistant U. S. Attorney.

*In the Circuit Court of the United States, Southern  
Division, Southern District of California, Ninth  
Circuit.*

No. —.

THE UNITED STATES,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, and Others,

Defendants.

**Amendment to Bill of Complaint Filed November  
23, 1905.**

The United States, by the Attorney General thereof, by leave of Court first obtained, amends its bill of complaint in this cause, by inserting after the end of line 20, on page 1, the following words:

“And Jackson Alpheus Graves, a citizen and resident of the county of Los Angeles, in the Southern Judicial District of the State of California.”

Also amends said bill of complaint by inserting, after the end of line 30, on page 6, thereof, the following:

“Your orator alleges, upon information and belief that the defendant Jackson Alpheus Graves claims and pretends to have and to hold some title or interest

or estate in and to the lands above described in this bill of complaint, but your orator alleges that the said claim and pretense are unfounded, and that the said Jackson Alpheus Graves has no legal or equitable right, title or estate in and to said lands, or in any thereof."

Your orator prays for the issuance of the process of subpoena, and for relief against said Jackson Alpheus Graves, as it hath already prayed as against the other defendants in this cause.

Your orator waives answer under oath.

L. H. VALENTINE,  
United States Attorney.

JOSEPH H. CALL,  
Special Assistant U. S. Attorney.

[Endorsed]: No. 1196. In the Circuit Court of the United States, Southern Division, Southern District of California, Ninth Circuit. United States, vs. Southern Pacific Railroad Co., et al. Amendment to Bill of Complaint. Service by Copy Admitted on November 21st, 1905. Wm. Singer, Jr., Attorney for Defendants. Filed Nov. 23, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special Assistant U. S. Attorney.

*In the Circuit Court of the United States, Ninth  
Judicial Circuit, Southern District of California,  
Southern Division.*

No. 1196.

THE UNITED STATES,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY (a Corporation), D. O. MILLS and  
HOMER S. KING, Trustees, THE CENTRAL  
TRUST COMPANY OF NEW YORK, Trus-  
tee, and JACKSON ALPHEUS GRAVES,  
Defendants.

**Enrollment.**

The complainants filed their bill of complaint here-  
in against the defendants, the Southern Pacific Rail-  
road Company, a corporation, D. O. Mills, and Homer  
S. King, Trustees and The Central Trust Company of  
New York, Trustee, on the 17th day of July, 1905,  
which is hereto annexed.

The complainants filed an amendment to their bill  
of complaint herein on the 17th day of July, 1905,  
which is hereto annexed.

A writ of subpoena directed to the United States  
Marshal for the Northern District of California, re-

quiring the defendants, the Southern Pacific Railroad Company, a corporation, D. O. Mills, and Homer S. King, trustees, to appear and answer to said bill of complaint, and amendment to bill of complaint, was thereupon, on said 17th day of July, 1905, issued, returnable on the 4th day of September, 1905, which is hereto annexed.

On the 17th day of July, 1905, the Court made and entered an order herein that the defendants, D. O. Mills and Homer S. King, as trustees, and the Central Trust Company of New York, a corporation, trustee, appear herein on or before the first Monday in September, 1905, and plead, answer or demur to the bill of complaint on or before the first Monday in October, 1905, a copy of which order is hereto annexed.

An alias writ of subpoena directed to the United States Marshal for the Northern District of California, requiring the defendants, the Southern Pacific Railroad Company, a Corporation, D. O. Mills, and Homer S. King, trustees, to appear and answer to said bill of complaint and amendment to bill of complaint, was thereafter on the 24th day of July, 1905, issued, returnable on the 4th day of September, 1905, which subpoena is hereto annexed.

The complainants filed an amendment to their bill of complaint herein on the 30th day of August, 1905, which is hereto annexed.

The defendants, Southern Pacific Railroad Company, and Homer S. King, trustee, appeared herein on the 5th day of September, 1905, by Wm. F. Herrin, Esq., and Wm. Singer, Jr., Esq., their solicitors.

The defendant Central Trust Company of New York, trustee, appeared herein on the 5th day of September, 1905, by Albert Rathbone, Esq., and Wm. Singer, Jr., Esq., their solicitors.

On the 29th day of September, 1905, the joint and several answer of the defendants, Southern Pacific Railroad Company, Homer S. King, trustee, and Central Trust Company of New York, trustee, to complainants' bill of complaint as amended was filed herein, and is hereto annexed.

The replication of complainants to the answer of defendants, Southern Pacific Railroad Co., Homer S. King, trustee, and Central Trust Co., trustee, was filed herein on the 29th day of September, 1905, and is hereto annexed.

On the 23d day of November, 1905, a stipulation signed by counsel for the respective parties stipulating "that the complainant in the above-entitled cause may file an amendment to the bill of complaint herein, bringing in Jackson Alpheus Graves as a party defendant," and further stipulating "that the answer of the Southern Pacific Railroad Company, and other, on file in this cause, shall stand as the answer of Jackson Alpheus Graves, with the same effect as

if his name had been specifically mentioned in said answer as a party answering the bill," and further stipulating "that the replication of the United States to the answer shall stand to the answer of Jackson Alpheus Graves," was filed herein and is hereto annexed.

The complainants filed an amendment to their bill of complaint herein on the 23d day of November, 1905, bringing in Jackson Alpheus Graves as a party defendant, which is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties, and filed in the clerk's office of said Circuit Court.

On the 21st day of May, 1906, being a day in the January Term, A. D. 1906, of said Circuit Court, said cause came on to be heard before the Court on the pleadings and proofs, and having thereupon been submitted to the Court, before the Honorable Erskine M. Ross, Circuit Judge, for its consideration and decision upon the pleadings and proofs, and upon briefs which were thereafter filed, and the Court having duly considered the same, and being fully advised in the premises, thereafter on the 21st day of January, 1907, being a day in the January Term, A. D. 1907, of said Circuit Court, ordered that a decree be entered herein for the complainants, and, accordingly, on the 18th day of March, 1907, a final decree was signed,

filed, entered and recorded herein, and is hereto annexed.

*United States Circuit Court, Ninth Circuit, Southern  
District of California, Southern Division.*

Case No. 1196.

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al,

Defendants.

**Final Decree.**

This cause came on for final decree, in open court, this -18th day of March, 1907.

The complainant, the United States, appeared by Mr. Joseph H. Call, Special Assistant United States Attorney; and the defendants, Southern Pacific Railroad Company, Homer S. King, as trustee, Central Trust Company of New York, as trustee, and Jackson Alpheus Graves, appeared by Mr. Wm. F. Herin and Mr. Albert Rathbone, their counsel, and by Mr. Wm. Singer, Jr., their attorney.

Issue having been joined, the testimony having been taken, and the cause having been argued and submitted, the Court, being fully advised in the premises, orders, adjudges and decrees as follows:



It is ordered, adjudged, and decreed, that the complainant, the United States, is owner, by title absolute and in fee, of the Northeast quarter of northeast quarter (NE.1/4 of NE.1/2) of section seven (7), in township six (6) north, range eight (8) west, and the west half of section thirty-one (31), in township nine (9) north, range fifteen (15) west, San Bernardino base and meridian; that the said defendants have not, nor has either of them, any right, title estate or interest in, or lien upon, the said lands, or any part thereof; and that the said defendants, and all persons claiming or to claim by, through or under them, are and each of them is, forever enjoined from asserting or claiming any right, title estate or interest in, or lien upon, the said lands or any part thereof, adverse to the complainant.

It is further ordered, adjudged and decreed, that all patents issued by the United States unto the defendant Southern Pacific Railroad Company for the said lands or any part thereof, are hereby canceled and annulled as to said lands.

It is further ordered, adjudged and decreed, that complainant, the United States, have and recover from the defendant Southern Pacific Railroad Com-

pany, its costs herein taxed at \$208.60/100; and that execution may issue for the recovery thereof.

ROSS,

Circuit Judge.

Decree entered and recorded March 18, 1907.

WM. M. VAN DYKE,

Deputy Clerk.

By Chas. N. Williams,

Clerk.

[Endorsed]: Case No. 1196. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al, Decree. Filed Mar. 18, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

Whereupon the said bill of complaint, amendment to bill of complaint, writ of subpoena, copy of order that the defendants appear, alias writ of subpoena, amendment to bill of complaint, joint and several answer, replication of complainants to the answer of defendants, stipulation that amendment to bill bringing in a new party defendant may be filed, amendment to bill of complaint, and final decree, are hereto annexed, said final decree being duly

signed, filed and enrolled pursuant to the practice of said Circuit Court.

Attest, etc.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: No. 1196. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California, Southern Division. The United States vs. The Southern Pacific Railroad Company, et al. Enrolled Papers. Filed March 18th, 1907. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Recorded, Decree Register Book No. 3, page 223.

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*In the Circuit Court of the United States, for the Southern District of California, Southern Division.*

No. 1196.

THE UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY

et al.,

Defendants.

### Opinion.

The agreed statement of facts shows that one of the two tracts of land involved in this suit is situated within the primary, and the other within the indemnity limits of the grant made by Congress to the Atlantic & Pacific Railroad Company by the act of July 27, 1866 (14 Stats. 292). Neither of the tracts is within the grant made by the same act to the Southern Pacific Railroad Company, but the latter company claimed them under the grant made to it by the act of Congress of March 3, 1871 (16 Stats. 573), under which it undertook to select them as indemnity land given it by that Act, and which selections were allowed by the Land Department, followed by patents of the Government.

Both of those acts of Congress, and the rights of the respective railroad companies thereunder have heretofore been the subject of frequent consideration and adjudication by this Court, as well as by the Supreme Court, so that it does not now seem necessary to do more than to cite the cases which, in my opinion, require a decree in this case in favor of the complainant.

Accordingly, on the authority of *Southern Pacific Railroad Company v. United States*, 189 U. S. 447, *United States v. Southern Pacific Railroad Company*, 146 U. S. 570, *Southern Pacific Railroad Com-*

pany v. United States, 183 U. S. 519, Southern Pacific Railroad Company v. United States, 168 U. S. 1, idem 184, U. S. 49, United States v. Southern Pacific Railroad Company, 117 Fed. 544, idem 200, U. S. 341, judgment will be entered for the complainant.

ROSS,

Circuit Judge.

[Endorsed]: No. 1196. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. The United States vs. Southern Pacific Railroad Co. et al. Opinion. Filed Jan. 21, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

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*United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.*

Case No. 1196.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
and Others,

Defendants.

**Stipulation as to Evidence.**

It is stipulated and agreed by and between the parties to this case, subject to all valid objections as to materiality and relevancy, as follows:

Subdivision I.

Item 1. That all acts of Congress and laws of the State of California, whether of public or private, general or special, nature, and all official acts and decisions of the Commissioner of the General Land Office and Secretary of Interior relating to the Southern Pacific Railroad Company or to the Atlantic and Pacific Railroad Company or affecting the rights of either of said companies or of the United States, and all decisions of the Supreme Court of the United States reported in the United States Reports relating to or affecting the rights of either of said companies, in so far as relevant and material to the issues and controversies in this case, shall be deemed before this Court for judicial notice.

Subdivision II.

Item 2. The act of Congress, approved on July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the State of Missouri and Arkansas to the Pacific Coast," is admitted in evidence, by reference to the same as printed in Volume 14 of the United States Statutes at Large, pages 292 and following.

Item 3. Within due time, the Atlantic and Pacific Railroad Company mentioned in the act of Congress referred to in item 2 hereof, assented to, and accepted the terms and conditions of, that act.

Item 4. The said Atlantic and Pacific Railroad Company filed maps designating its line of route with the Secretary of the Interior, which the Secretary of the Interior accepted as definitely locating the line of road, in sections and at dates as follows: From Springfield, Missouri, to the west line of Missouri, on December 17th, 1866; from the west line of Missouri to Kingfisher Creek, Indian Territory, on December 2d, 1871; from Kingfisher Creek to the eastern boundary of New Mexico, on February 7th, 1872; from the eastern boundary of New Mexico, to the western boundary of New Mexico, on March 12th, 1872; from the western boundary of New Mexico, through Arizona, to the east bank of Colorado River, near Needles, on March 12th, 1872; from the last-mentioned point on the Colorado River to township 7 north, range 7 east, San Bernardino meridian, in California, on August 15th, 1872; from the last-mentioned point (township 7 north, range 7 east) to the west line of Los Angeles County, in California, on March 12th, 1872; and from the last-mentioned point to the Pacific Coast, at San Bernardino, on August 15th, 1872. As such maps were filed, as aforesaid, the Secretary of the Interior transmitted them to the Commissioner of

the General Land Office, directing that they be given proper action; except that the said two maps filed on August 15th, 1872, were transmitted by the Secretary of the Interior to the commissioner on April 16th, 1874, without express direction.

Item 5. Under direction of the Secretary of the Interior, the Commissioner of the General Land Office, on April 22d, 1872, withdrew from pre-emption or homestead entry, private sale or location, all odd numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in item 4 hereof as filed on March 12th, 1872, which were not reserved, sold, granted or otherwise appropriated, and were free from pre-emption, or other claims or rights, on March 12th, 1872; and on November 23d, 1874, the said commissioner, under direction of the Secretary of the Interior, withdrew from sale or entry all odd numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in Item 4 hereof as filed on August 15th, 1872, saying in his said order of withdrawal of November 23d, 1874, that the rights of the Atlantic and Pacific Railroad Company must attach to the lands so withdrawn, as of August 15th, 1872.

Item 6. The withdrawals referred to in the next preceding paragraph hereof, were accompanied by



plats showing the line of route in California designated by the maps referred to in Item 4 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 7. The Atlantic and Pacific Railroad Company did not construct any railroad in California.

Item 8. The act of Congress, approved on July 6th, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of its road, and for other purposes," is admitted in evidence, by reference to the same as printed in volume 24 of the United States Statutes at Large, pages 123 and following.

### Subdivision III.

Item 9. The Southern Pacific Railroad Company mentioned in the act of Congress referred to in Item 2 hereof, was duly incorporated and organized as such, under the laws of California, on December 2d, 1865, and the said company was thereby authorized and empowered to construct, own, maintain and operate a railroad from the Bay of San Francisco, thence through the counties of San Francisco, Santa Clara, Monterey, San Luis Obispo, Tulare, and Los

Angeles to the town of San Diego, thence easterly through San Diego County to the Colorado River.

Item 10. Within due time, the said Southern Pacific Railroad Company duly assented to, and accepted the terms and conditions of, the act of July 27th, 1866, mentioned in Item 2 hereof.

Item 11. On January 3d, 1867, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating a line of general route of the railroad which it claimed the right and authority to construct under the provisions of the act of Congress of July 27th, 1866, referred to in Item 2 hereof; which line of route as designated on the said map, commenced in the city of San Francisco and extended thence by way of San Jose, Gilroy, Tres Pinos, Alcalde, Huron, Goshen and Mojave, to the Colorado River, at or near Needles.

Item 12. On January 3d, 1867, the Secretary of the Interior received and filed the map referred to in Item 11 hereof, and on that day delivered it to the Commissioner of the General Land Office with directions that the said map be given appropriate official action.

Item 13. On March 22d, 1867, the Commissioner of the General Land Office, acting under direction of the Secretary of the Interior's letter dated March 19th, 1867, withdrew all odd numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the

map set forth in Item 11 hereof, from sale or location, pre-emption or homestead entry. The Secretary of the Interior in his above-mentioned letter of March 19th, 1867, after directing the withdrawal, said:

“I do not think it necessary at this time to pass upon the question as to whether this railroad company have adopted the route of any other railroad. Any indemnity of grant arising out of conflict of location under the first provision the third section of the Act, will be reserved for future consideration.”

Item 14. The withdrawal referred to in the next preceding paragraph hereof, was accompanied by a map showing the line of general route designated on the map set forth in Item 11 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 15. On July 14th, 1868, the Secretary of the Interior rendered a decision wherein he held that the Southern Pacific Railroad Company was not lawfully authorized to construct a railroad along the line of route designated upon the map of January 3d, 1867, set forth in Item 11 hereof, and ordered the withdrawals referred to in Item 13 here-

of, set aside; on August 20th, 1868, the Secretary of the Interior vacated the said order of July 14th, 1868, as to all lands south of San Jose; on November 2d, 1869, the Secretary of the Interior revoked the said order of August 20th, 1868, and directed restoration of the lands withdrawn on March 22d, 1867; on November 11th, 1869, upon review, Secretary Cox affirmed his said order of November 2d, 1869, and directed restoration of the said lands after sixty days publication; on December 15th, 1869, Secretary Cox suspended the said orders of restoration made on November 2d, 1869, and November 11th, 1869; and on July 26th, 1870, the Secretary of the Interior directed that the original withdrawals of March, 1867, set forth in Item 13 hereof, be respected.

Item 16. The act of Congress, approved on June 25th, 1868, entitled "An act relative to filing reports of railroad companies," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 79.

Item 17. The act of Congress, approved on July 25th, 1868, entitled "An Act to extend the time for the construction of the Southern Pacific Railroad in the State of California," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 187.

Item 18. Prior to the year 1869, the San Francisco and San Jose Railroad Company, was duly incorporated and organized under the laws of California, and thereby authorized to construct a railway from San Francisco to San Jose.

Item 19. During the year 1869, the said San Francisco and San Jose Railroad Company constructed and fully equipped a railroad from San Francisco to San Jose; during the same year the said Southern Pacific Railroad Company constructed and fully equipped a continuation of the said railroad from San Jose to Gilroy, a distance of 30.26 miles; and during the years 1869 and 1870 the said Southern Pacific Railroad Company constructed and fully equipped a further continuation of the said railroad from Gilroy to Tres Pinos, a distance of more than 20 miles. All of the said railroad from San Francisco to Tres Pinos was constructed upon, or as nearly as practicable upon, the line designated on the map of January 3d, 1867, set forth in Item 11 of this statement.

Item 20. By an act, approved on March 1st, 1870, entitled "An Act relating to certificates of incorporation," the legislature of California provided as follows:

"Section 1. Any incorporation now or hereafter organized under the laws of this State may amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors,

or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation as thus amended, duly certified to be correct by the president and secretary of the board of directors, or trustees of such corporation, shall be filed in the same office, or offices, where the original articles of certificate are required by law to be filed; and from the time of filing such copy of the amended articles or certificates, such corporation shall have the same powers, and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided, further, that such original and amended articles or certificate shall, together, contain all the matters and things required by the law under which the original articles of association or certificate of incorporation were executed and filed; and provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason of the failure of such certificate to set forth matters required by law to make the same

valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper in the town or county in which the principal place of business of said company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the secretary of the said company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided, that nothing in this Act shall be construed to authorize any corporation to diminish its capital stock.

Sec. 2. This Act shall take effect and be in force after its passage."

Item 21. By an act approved on April 4th, 1870, entitled "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," the legislature of California enacted as follows:

"Section 1. Whereas, by the provisions of a certain act of Congress of the United States of America, entitled an act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California, approved July twenty-seventh, eighteen

hundred and sixty-six, certain grants were made to, and certain rights, privileges, powers and authorities were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said company to more fully and completely comply with and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns, are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company shall determine to be the most practicable, and to file new amendatory articles of association; and the right, power and privilege is hereby granted to, conferred upon and vested in them, to construct, maintain and operate, by steam or other power, the said railroad and telegraph line mentioned in the said acts of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, franchises, power and authority conferred upon, granted to or vested in said company by the act of Congress and any act of Congress which may be hereafter enacted.



Sec. 2 This act shall take effect and be in force from and after its passage."

Item 22. The Joint Resolution of Congress, approved on July 28th, 1870, entitled "Joint Resolution concerning the Southern Pacific Railroad of California," is admitted in evidence, by reference to the same as printed in Volume 16 of the United States Statutes at Large, page 382.

Item 23. On October 11, 1870, articles of association, amalgamation and consideration were made and entered into, in due conformity to and compliance with the laws of California, by and between the said Southern Pacific Railroad Company and San Francisco and San José Railroad Company, whereby it was provided that the last named company was amalgamated and consolidated with the said Southern Pacific Railroad Company, under the corporate name and style of Southern Pacific Railroad Company, and that the said Southern Pacific Railroad Company thereby became the owner of all stock and property of the said San Francisco and San Jose Railroad Company; and the said articles further provided that the Southern Pacific Railroad Company was authorized to purchase, construct, maintain, own and operate a railroad from the city of San Francisco through the counties of San Francisco, San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to the Colorado River, and

such branch line railroads as its Board of Directors might deem advantageous.

Item 24. The said Southern Pacific Railroad Company never constructed any railroad between Tres Pinos and Alcalde, a distance of about fifty miles.

Item 25. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous line of railroad from Tres Pinos, by way of Huron, Goshen and Mojave, to junction with the Atlantic and Pacific Railroad, on the Colorado River, at Needles, in several sections, on or about the following dates: The 17th section, 20.559 miles, from Tres Pinos (in NE.  $\frac{1}{4}$  of section 23, township 21 south, range 14 east, M. D. M.) to a point in the NW.  $\frac{1}{4}$  of section 11, township 20 south, range 17 east, M. D. M., on July 16th, 1888; the 9th section, 20 miles, from the last-mentioned point to the NE.  $\frac{1}{4}$  of section 2, township 19 south, range 20 east, M. D. M., on January 9th, 1877; the 8th section 20 miles, from the last-mentioned point to Goshen (in section 19, township 18 south, range 24 east, M. D. M.), on December 11th, 1876; the 3d section 20 miles, from Goshen to the NW.  $\frac{1}{4}$  of section 30, township 21 south, range 25 east, M. D. M., on June 30th, 1872; the fourth section, 20 miles, from the last-mentioned point, to the NW.  $\frac{1}{4}$  of section 2, in township 25 south, range 25 east M. D. M., on June 30th, 1873; the 5th section, 20 miles, from the last-mentioned point

to the NE.  $\frac{1}{4}$  of section 9, township 28 south, range 26 east, M. D. M., on June 13th, 1874; the 6th section, 20 miles, from the last-mentioned point to the NE.  $\frac{1}{4}$  of section 5, township 30 south, range 29 east, M. D. M., on June 10th, 1875; the 7th section, 20 miles, from the last-mentioned point to the SE.  $\frac{1}{4}$  of section 33, township 30 south, range 31 east, M. D. M., on January 13th, 1876; the 10th section, 41.66 miles, from the last-mentioned point to Mojave (in the NE.  $\frac{1}{4}$  of section 17, township 11 north, range 12 west, S. B. M.), on December 17th, 1877; the 11th section, 12th section, 13th section, 14th section, 15th section, and 16th section, in all 242.507 miles, connecting with the 10th section at Mojave, and extending thence to the Colorado River, at or near Needles, all constructed prior to April 19th, 1883.

Item 26. Commissioners, duly appointed for that purpose, examined all of the said railroad from San Jose to Tres Pinos and from Alcalde to the Colorado River, at or near Needles, after construction, respectively, of each of the said several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, as near as may be along the line indicated on the map of January 3d, 1867, set forth in Item 11, of this stipulation, in all respects as required by the said Act of July 27th, 1866, and recommended that the same be accepted and

approved; each of which reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed and as correctly showing the location thereof, with the approval of the said Commissioners endorsed upon the maps; and each of said reports and maps were accepted and approved by the Secretary of the Interior. Such reports were made, and maps approved by the Commissioners, and said reports and maps were received, filed and approved by the Secretary of the Interior, on the following dates: 1st section (San Jose to Gilroy), report made and maps approved by the Commissioners, on October 29th, 1870, report and map approved by the Secretary on January 20th, 1871; 2d section (Gilroy to Tres Pinos), report made and maps approved by the Commissioners on September 12th, 1871, report and map approved by the Secretary on October 13th, 1871; 3d section, report made and map approved by the Commissioners on September 14th, 1872, report and map approved by the Secretary on September 28th, 1872; 4th section, report made and map approved by the Commissioners on July 23d, 1873, report and map approved by the Secretary on August 5th, 1873; 5th section, report made and map approved by the Commissioners on Septem-

ber 19th, 1874, report and map approved by the Secretary on October 9th, 1874; 6th section, report and map approved by the Commissioners on August 3d, 1875, report and map approved by the Secretary on August 21st, 1875; 7th section, report made and map approved by the Commissioners on May 27th, 1876, report and map approved by the Secretary on June 14th, 1876; 8th section, report made and map approved by the Commissioners on January 2d, 1877, report and map approved by the Secretary on January 22d, 1877; 9th section, report made and map approved by the Commissioners on February 9th, 1877, report and map approved by the Secretary, on February 20th, 1877; 10th section, report made and map approved by the Commissioners on January 30th, 1878, report and map approved by the Secretary, on February 11th, 1878; 11th section, 12th section, 13th section, 14th section, 15th section, and 16th section, reports made and maps approved by the Commissioners on December 27th, 1884, reports and maps received and filed by the Secretary on January 7th, 1885, and approved by the Secretary on September —, 1897; 17th section, report made and map approved by the Commissioners on April 2d, 1889, report and map approved by the Secretary on October 23d, 1889.

#### Subdivision IV.

Item 27. The Act of Congress, approved on March 3d, 1871, entitled "An Act to incorporate the Texas

Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," is admitted in evidence by reference to the same as printed in Volume 16 of the United States Statutes at Large, pages 573, and following:

Item 28. On May 16th, 1871, the Board of Directors of the Southern Pacific Railroad Company adopted a resolution accepting the terms, conditions, and impositions of the Act of Congress mentioned in the next preceding paragraph hereof, and directing that a copy thereof, certified under the seal of said Company, be forwarded to and filed with the Secretary of the Interior, and on February 25th, 1887, a copy of the said resolution, certified by the Secretary of the said Company, under the corporate seal of the said Company, was filed with the Secretary of the Interior.

Item 29. On April 3d, 1871, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating the line of general route of the railroad which it claimed the right and authority to construct under the provisions of the said Act of March 3d, 1871; which map the Secretary of the Interior on that day received, filed and delivered to the Commissioner of the General Land Office, with directions that the same be given appropriate action.

Item 30. On April 21st, 1871, the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd-numbered sections of public land, lying within twenty miles and thirty miles on each side of the line of route shown on the map referred to in Item 29 hereof, from sale or location, pre-emption or homestead entry.

Item 31. The withdrawal referred to in Item 30 hereof, was accompanied by a plat showing the line of general route designated on the map set forth in Item 29 of this stipulation, with 20-mile limit lines and 30-mile limit lines, parallel with, and on each side of the said line of route, as such limit lines were established by the Commissioner of the General Land Office under direction of the Secretary of the Interior.

Item 32. On April 15th, 1871, the said Southern Pacific Railroad Company, duly conforming to and complying with the laws of California, amended its articles of incorporation as they then existed, so as to include therein a particular description of the line of route designated on the plat set forth in Item 29 hereof.

Item. 33. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous railroad from Mojave, by way of Los Angeles, to the Colorado River, at or near Yuma, in several sections, along or near the line

designated on the said general route map of April 3d, 1871, all prior to December 6th, 1877.

Item 34. Commissioners, duly appointed for that purpose, examined all of the said railroad after constructions, respectively, of each of the several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, in all respects as required by the said act of March 3d, 1871; and recommended that the same be accepted and approved; each of which reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon; duly verified by the proper officers of the Southern Pacific Railroad Company, as a map and profile of such railroad as finally located and constructed, and showing the correct location thereof, with the approval of the said Commissioners endorsed upon the maps. The said reports were made and maps approved by the Commissioners, and the said reports and maps were filed and approved by the Secretary of the Interior, and approved by the President of the United States, on the following dates: 1st section (from a point in the NW.  $\frac{1}{4}$  of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE.  $\frac{1}{4}$  of section 27, township 1, south, range 9 west, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on April 15th, 1874, report and map



filed and approved by the Secretary of the Interior on May 8th, 1874, and report approved by the President of the United States on May 9th, 1874; 2d section (from the said point in the NE.  $\frac{1}{4}$  of section 27, township 1 south, range 9 west, S. B. M., to a point in the SW.  $\frac{1}{4}$  of section 4, township 3 south, range 1 west, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on October 21st, 1875, report and map filed and approved by the Secretary on November 8th, 1875, and report approved by the President on November 11th, 1875; 3d section (from the said point in the SW.  $\frac{1}{4}$  of section 4, township 3, south, range 1 west, S. B. M., to a point in the SW.  $\frac{1}{4}$  of section 24, township 5 south, range 7 east, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on June 22d, 1876, report and map filed and approved by the Secretary on July 10th, 1876, and report approved by the President on July 21st, 1876; 4th section (from the said point in the NW.  $\frac{1}{4}$  of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE.  $\frac{1}{4}$  of section 17, township 11 north, range 12 west, S. B. M., a distance of 78.59 miles), report made and map approved by the Commissioners on February 17th, 1877, report and map filed and approved by the Secretary on March 1st, 1877, and report approved by the President on March 2d, 1877; 5th section (from the said point in the SW.  $\frac{1}{4}$  of section 24, township 5

south, range 7 east, S. B. M., to a point in the SE.  $\frac{1}{4}$  of section 26, township 16 south, range 22 east, on the Colorado River, a distance of 118.37 miles), report made and map approved by the commissioners on December 6th, 1877, report and map filed and approved by the Secretary on January 19th, 1878, and report approved by the President on January 23d, 1878.

#### Subdivision V.

Item 35. The northeast quarter of northeast quarter (NE.  $\frac{1}{4}$  of NE.  $\frac{1}{4}$ ) of section seven (7), in township six (6) north, range eight (8) west, San Bernardino Base and Meridian, is situated within primary limits of the land grant made unto the Atlantic & Pacific Railroad Company by the hereinbefore mentioned Act of Congress of July 27th, 1866, and within indemnity limits of the land grant made unto the Southern Pacific Railroad Company by the hereinbefore mentioned Act of Congress of March 3d, 1871; but the said land is not within either primary or indemnity limits of the land grant made unto the Southern Pacific Railroad Company by the said Act of Congress of July 27th, 1866.

Item 36. The west half (W.  $\frac{1}{2}$ ) of section thirty-one (31), in township nine (9) north, range fifteen (15) west, San Bernardino base and meridian, is situated within indemnity limits of the land grant made unto the Atlantic & Pacific Railroad Company by the

hereinbefore mentioned Act of Congress of July 27th, 1866, and within indemnity limits of the land grant made unto the Southern Pacific Railroad Company by the hereinbefore mentioned Act of Congress of March 3d, 1871; but the said land is not within either primary or indemnity limits of the land grant made unto the Southern Pacific Railroad Company by the said Act of Congress of July 27th, 1866.

Item 37. The lands described in Item 35 and Item 36 of this Stipulation as to Evidence, were patented by the United States unto the Southern Pacific Railroad Company by patent dated June 30th, 1903, pursuant to said Company's indemnity selection thereof as indemnity lands of its said March 3d, 1871, land grant, by List No. 93, in due form, filed in the Los Angeles land office on November 10th, 1902.

Item 38. It appears from the records of the United States Land Office, for the Los Angeles District of California, that within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the Act of Congress of March 3d, 1871, there remains more than 50,000 acres of surveyed public land, vacant of record, embraced in the odd-numbered sections returned as agricultural in character, which have not been selected as indemnity by said Company, not including any lands embraced within either the granted limits or indemnity limits of the grant to the

Atlantic and Pacific Railroad Company, made by the Act of Congress of July 27th, 1866.

Item 39. The official "Land Office Report. 1875," at page 409, contains the following "Statement exhibiting land concessions by Acts of Congress to States and Corporations, etc.": Act Mar. 3, 1871, 16 Stats. 579, Southern Pacific Railroad Company, Estimated quantity embraced within the 20 and 30 mile limits of the grant, 3,520,000 acres; Estimated quantity which the company will receive from the grant, within the 20 and 30 mile limits thereof, 3,000,000 acres.

Item 40. On July 23d, 1885, the said Southern Pacific Railroad Company sold, under contract for deed No. 4722, for the full sum of \$308.00 cash in hand that day paid, all of the land described in Item 36 of this Stipulation as to Evidence, unto the Atlantic & Pacific Fibre Importing and Manufacturing Company, a foreign corporation; and by instrument in writing bearing date January 27th, 1893, the said Atlantic & Pacific Fibre Importing and Manufacturing Company assigned the said contract, and its interest in the lands therein described, unto Jackson Alpheus Graves, a citizen of the United States.

Subdivision VI.

Item 41. Either party to this suit may introduce

further and additional testimony or other evidence,  
at any time within ninety days from this date.

Agreed to and signed on November 21st, 1905.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

WM. SINGER, Jr.,

Attorney for said Defendants.

WM. F. HERRIN,

ALBERT RATHBONE,

Counsel for the said Defendants.

[Endorsed]: No. 1196. U. S. Circuit Court, Southern District of California, Southern Division. United States, vs. Southern Pacific Railroad Co., et al. Stipulation as to Evidence. Filed Nov. 24, 1905. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., 1127 Merchants' Exchange, San Francisco, Cal., Atty. for Defendants.

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*In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD CO., et al.,  
Defendants.

**Report of Special Examiner.**

To the Honorable, the Judges of the Circuit Court of the United States, in and for said District:

Pursuant to an order of reference made and entered in the above-entitled cause upon the 18th day of December, 1905, whereby it is ordered that the undersigned, as Special Examiner in Chancery, should take the evidence in the above-entitled cause and report the same to the Court, and said Special Examiner does now submit this, his report, as follows:

That the complainant appeared before the undersigned on the 16th day of February, 1906, at the office of Joseph H. Call, Esq., Room 316-4 Tajo Building, at Los Angeles, California, by said Joseph H. Call, Esq., Special Assistant United States Attorney, and the defendants appeared at the same time and place by their solicitor, Guy Shoup, Esquire; and thereupon the parties entered into the stipulation which was made a part of and is annexed to the record accompanying this report, and complainant introduced in evidence exhibits marked Complainant's Exhibits "K" and "L," respectively.

And the said record accompanying this report contains all of the evidence and exhibits introduced in said cause by the respective parties, together with the stipulations entered into, before me as Special Ex-

aminer; all of which, with the exhibits introduced, is now herewith returned to the Court.

LEO LONGLEY,  
Special Examiner in Chancery.

Dated May 24, 1906.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD CO., et al.,  
Defendants.

**Testimony.**

Testimony taken by consent of parties before Leo Longley, Special Examiner and Stenographer, in the city of Los Angeles, California, on February 16th, 1906.

**Appearances:**

Mr. JOSEPH H. CALL, Special United States Attorney, for Complainant.

Mr. GUY SHOUP, for the Defendants, except D. O. Mills.

Case No. 1196.

*United States Circuit Court, Ninth Circuit, Southern  
District of California, Southern Division.*

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,  
and Others,

Defendants.

**Further Stipulation as to Evidence.**

It is stipulated by and between the parties to this case, subject to all valid objections as to materiality and relevancy, as follows:

1. On or about April 1st, 1875, by instrument in writing bearing that date, the Southern Pacific Railroad Company made, executed and delivered unto D. O. Mills and Lloyd Tevis, as trustees, a mortgage covering railroads, depots, rolling stock and other property, together with lands therein described as being the odd-numbered sections of land granted to the Southern Pacific Railroad Company, and which might be lawfully selected by that company as indemnity lands, by and under the grant and provisions of the Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the State of Missouri and Ar-



kansas to the Pacific Coast," approved July 27th, 1866, and the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1871; which mortgage was given to secure the payment of negotiable bonds issued and to be issued and sold, of face value of forty-six million (46,000,000) dollars, each bond payable thirty (30) years after date thereof, and to bear six (6) per cent interest.

Bonds were issued, and sold for value to many different individual purchasers in the United States, England and elsewhere, prior to the year 1896; and at the time this suit was brought such bonds so sold of the face value of more than ten million (10,000,000) dollars were outstanding, unpaid.

The defendant Homer S. King, trustee, was duly substituted as trustee under the said mortgage, in place and stead of the said Lloyd Tevis, trustee, prior to the commencement of this suit.

2. On or about September 15th, 1893, by instrument in writing bearing that date, the Southern Pacific Railroad Company made, executed and delivered unto the defendant Central Trust Company of New York, a corporation, as trustee, a second mortgage covering said railroads, depots, rolling stock and other property, together with lands therein described as the several sections of land described in

the said first mortgage of April 1st, 1875; which mortgage was given to secure the payment of negotiable bonds, issued and to be issued and sold, of face value not to exceed fifty-eight million (58,000,000) dollars, each bond payable on November 1st, 1937, and to bear five (5) per cent interest.

Bonds were issued, and sold for value to many different individual purchasers in the United States, England and elsewhere, prior to the year 1896; and at the time this suit was brought, such bonds so sold of the face value of more than twenty million (20,000,000) dollars were outstanding, unpaid.

Made and signed on February 16th, 1906.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

WM. SINGER, Jr.

Attorney for all Defendants other than D. O. Mills.

[Endorsed]: No. 1196. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Further Stipulation as to Evidence. Wm. Singer, Jr., Atty. for Defendants.

Mr. CALL.—The parties enter into the following stipulation which I hereby request be made part of the record.

The stipulation last referred to is as follows: Case No. 1196. United States Circuit Court, Ninth Circuit, Southern District of California, Southern

Division. United States, Plaintiff, vs. Southern Pacific Railroad Company, and others, Defendants. Further Stipulation as to Evidence. It is stipulated by and between the parties to this case, subject to all valid objections as to materiality and relevancy, as follows::

1. On or about April 1st, 1875, by instrument in writing bearing that date, the Southern Pacific Railroad Company made, executed and delivered unto D. O. Mills and Lloyd Tevis, as trustees, a mortgage covering railroads, depots, rolling stock and other property, together with lands therein described as being the odd-numbered sections of land granted to the Southern Pacific Railroad Company, and which might be lawfully selected by that company as indemnity lands, by and under the grant and provisions of the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July 27th, 1866, and the Act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1871; which mortgage was given to secure the payment of negotiable bonds issued and to be issued and sold, of face value of forty-six million (46,000,000) dollars, each bond payable thirty (30) years after date thereof, and to bear six (6) per cent interest.

Bonds were issued, and sold for value to many different individual purchasers in the United States, England and elsewhere, prior to the year 1896; and at the time this suit was brought such bonds so sold of the face value of more than ten million (10,000,000) dollars were outstanding, unpaid.

The defendant Homer S. King, trustee, was duly substituted as trustee under the said mortgage, in place and stead of the said Lloyd Tevis, trustee, prior to the commencement of this suit.

2. On or about September 15th, 1893, by instrument in writing bearing that date, the Southern Pacific Railroad Company made, executed and delivered unto the defendant Central Trust Company of New York, a corporation, as trustee, a second mortgage covering said railroads, depots, rolling stock and other property, together with lands therein described as the several sections of land described in the said first mortgage of April 1st, 1875; which mortgage was given to secure the payment of negotiable bonds, issued and to be issued and sold, of face value not to exceed fifty-eight million (58,000,000) dollars, each bond payable on November 1st, 1937, and to bear five (5) per cent interest.

Bonds were issued, and sold for value to many different individual purchasers in the United States, England and elsewhere, prior to the year 1896; and at the time this suit was brought, such bonds so sold

of the face value of more than twenty million (20,000,000) dollars were outstanding, unpaid.

Made and signed on February 16th 1906. Joseph H. Call, Special Assistant U. S. Attorney. Wm. Singer, Jr., Attorney for all defendants other than D. O. Mills."

Mr. CALL.—I offer in evidence certain parts of the record in the case of United States vs. Southern Pacific Railroad Company, et al., number 184, United States Circuit Court, Southern District of California, hereby marked Complainant's Exhibit "K."

I also offer in evidence certain parts of the record in the case of United States vs. The Southern Pacific Railroad Company, et al., numbered 600, in the United States Circuit Court, Southern District of California, hereby marked Complainant's Exhibit "L."

Mr. SHOUP.—To which offer, and each offer, defendants object upon the ground that the same is irrelevant and immaterial.

Thereupon the hearing was adjourned, subject to be resumed upon reasonable notice by either side.

[Endorsed]: Filed May 24, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al.,

Defendants.

**Complainant's Exhibit "K."**

Leo Longley, Special Examiner.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

No. 184.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,

Defendants.

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*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

The Southern Pacific Railroad Company, and D. O.

Mills and Garrit L. Lansing, Trustees, The City Brick Company, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling,



Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John T. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammorretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez,

Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb. Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W.

A. Spencer, H. G. Stevenson, H. J. Stevenson,  
M. W. Stimson, Robert Strathearn, R. P.  
Strathearn, Eleanor Sussman, D. M. Suther-  
land, John Sweeney, W. H. Taggart, James  
R. Taylor, Mary G. Tongier, James R. Town-  
send, Mrs. C. L. True, L. Tunison, J. S. Tur-  
ner, George S. Umpleby, F. Veysset, George  
Vilas, Alden R. Vining, Daniel A. Wagner,  
S. A. Waldron, W. W. Wallace, C. H. Watts,  
Mrs. Julia J. Wheeler, A. C. Whitacre, M. L.  
Wicks, Moye Wicks, Mrs. Jennie L. Wicks,  
Mary C. Williams, C. N. Wilson, Robert N.  
C. Wilson, J. Youngblood,

Defendants.

**Amended Bill of Complaint on Case No. 184.**

To the Judges of the Circuit Court of the United  
States, for the Southern District of California:

I.

The United States of America, by the Attorney-  
General thereof, by an order of Court first had and  
obtained, brings this its amended bill of complaint  
against: The Southern Pacific Railroad Company,  
acting as a corporation under and by virtue of the  
authority hereinafter set forth; D. O. Mills and Gar-  
rit L. Lansing, trustees, the City Brick Company, a  
corporation organized and existing under and by  
virtue of the general laws of the State of California;

the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and existing under and by virtue of the laws of Great Britain, The Fairmont Land and Water Company, the Farming and Fruit Land Company, the North Pasadena Land and Water Company, and The Pacific Coast Oil Company, each a corporation organized and existing under and by virtue of the laws of California; and Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Bachman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunnell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Diter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, George W. Fentrees, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J.

Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McKay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Meyers D. C. Newcomb, Albert E. Nettleton James O'Rielly, George L. Ott, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James

Peirano, John J. Peckman, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, E. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequois, Henry C. Sherman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Villas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, and J. Youngblood; and each of said defendants being a citizen of the State of California, and residing therein, except said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which, as your orator al-

leges upon its information and belief, is a citizen of Great Britain, and a British subject.

And thereupon your orator alleges and shows unto the Court that the lands hereinafter described were acquired by the United States of America from Mexico in the year of 1846, and the title to said lands were confirmed to your orator by treaty of Gualalupe Hidalgo, in the year of 1848; and all of said lands were then, ever since have been and now are owned by the United States, by title in fee simple, and your orator during all of said times has been, and now is, in possession thereof; said lands being described as follows, to wit:

All of the sections of land designated by odd numbers in townships three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16) seventeen (17) and eighteen (18) west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11) twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west; also all the sections of land designated by odd numbers as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, except sections twenty-three (23)

and thirty-five (35) in township four (4) north, range fifteen (15) west, and except sections one (1) eleven (11) and thirteen (13), in township three (3) north, range fifteen (15) west; also the unsurveyed lands within said area which will be designated as odd numbered sections when the public surveys according to the laws of the United States shall have been extended over such townships; all the aforesaid lands being surveyed by San Bernardino Base and Meridian, and situated within the state of California.

## II.

Your orator further shows that, by the Act of Congress approved July 27, 1866, entitled "An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad, a large amount of lands in the State of California and other states and territories, and to the whole of which said act your orator refers (See U. S. Statutes, Volume 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific



Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore

granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And section 18 of said act provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the line regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific Ocean; and on or about ———, 1866, did file such plat in the office

of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved; including said lands in suit herein which fell within the twenty-mile limit of said line.

### III.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871 (see U. S. Stats., vol. 16, p. 573), entitled "An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866.

“Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.”

#### IV.

Your orator further shows that, by the act of Congress approved July 6, 1886, entitled “an act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast and to restore the same to settlement, and for other purposes,” all the lands and rights to lands in California theretofore granted and conferred upon the said Atlantic and Pacific Railroad Company were forfeited and resumed to the United States, and restored to the public domain, for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

#### V.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein make some claim of ownership to the lands above described, the exact nature and extent of such claims being unknown to your orator; but your orator is informed and believes, and so alleges the fact that said defendants claim said lands under and by virtue of said act

of Congress of March 3d, 1871 above set forth, granting lands to the Southern Pacific Railroad Company to aid in the construction of a railroad and telegraph line from Tehachapi Pass, via Los Angeles, to a point at or near the Colorado River, and there connect with said Texas and Pacific Railroad Company, and said defendants claim that said Southern Pacific Railroad Company did accept the terms and conditions of said grant, and did designate the route of its road between said points within the time and manner provided in said act of Congress, but your orator alleges that the designated line of route of said Southern Pacific Railroad Company so claimed and pretended to be located as aforesaid lies upon the same line as that of the Atlantic and Pacific Railroad Company, and the lands in suit herein, if said Southern Pacific Railroad Company had designated its said line of route as claimed by said defendants, would be at the place where the said routes would be upon the same general line, and such routes would have intersected each other.

## VI.

Your orator further alleges that, if said Southern Pacific Railroad Company had designated its line of route from Tehachapi Pass by way of Los Angeles, to a point at or near the Colorado River as claimed by defendants herein, or between such terminal points at all, that such route would have been upon the same general line as the route of said Atlantic and Pacific

Railroad Company, located as aforesaid, and all the lands in suit herein would have fallen within the limits of the grant to each of said companies and in such overlapping limits within the twenty mile and primary limits of said Atlantic and Pacific Railroad; but your orator alleges that none of said lands were covered by said grant to said Southern Pacific Railroad Company, and none of said lands were of the category of lands which were to be granted to said company.

#### VII.

Your orator further alleges and shows unto the Court that all of the lands in suit herein are situated within twenty miles of the designated line of route of said Atlantic and Pacific Railroad Company and within the primary and twenty mile limits of said grant; and as respects the mineral character of said lands, and of every tract thereof, they were in the same condition in that respect during the whole of the year 1866 that they have been in at all times from that year down to and including the 3d day of April, 1871.

#### VIII.

Your orator is informed and believes, and so alleges the fact to be, that the claim of defendants to said lands is invalid, and not founded upon any legal or equitable right, but is a mere pretense and excuse for the defendants to trespass upon said lands.

## IX.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein claim that a line of railroad and telegraph line, from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said act of Congress of March 3, 1871, above referred to, in which it is therein provided for the construction of a railroad and telegraph line between said points, and that commissioners appointed by the president of the United States, have reported that such railroad was constructed in all respects in compliance with said act; but your orator alleges that such claims and pretenses are unfounded, and that said Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, has not constructed any railroad or telegraph line between said points within the time or manner provided by said act, nor at all.

## X.

Your orator further alleges that, on December 2, 1865, a corporation was organized under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the af-

fairs thereof, and other matters relating thereto," which said act is printed in the Statutes of California of 1861, at page 607, and to which act your orator refers.

## XI.

Your orator further alleges that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the Counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward, through said county of San Diego, to the eastern line of the State of California, there to connect with the contemplated railroad from the eastern line of the State of California to the Mississippi River.

## XII.

Your orator further shows that, on October 11, 1870, said Southern Pacific Railroad Company entered into pretended articles of consolidation and amalgamation with the San Francisco and San Jose Railroad Company, a corporation organized under the laws of California with similar powers, and the Santa Clara and Pajaro Valley Railroad Company, also a corporation organized under the laws of California with similar powers, by which pretended



articles of consolidation and amalgamation said several companies agreed to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation by the name and style of "The Southern Pacific Railroad Company," which pretended articles were signed, published and filed in the mode as provided by said general law of California; but your orator alleges that the articles of incorporation of said railroad companies respectively, and of neither of them, authorized said companies to consolidate or amalgamate with any other railroad company; and your orator is informed and believes, and so alleges the fact to be, that such pretended consolidation was unauthorized by the laws of the State of California and without the consent of said state, and was unauthorized by the laws of the United States and without authority from the United States, and that such pretended consolidation was and is illegal and void.

### XIII.

Your orator further alleges and shows unto the Court that, on the 12th day of August, 1873, said Southern Pacific Railroad Company, the corporation pretended to be created by said articles of consolidation and amalgamation of October 11, 1870, as

aforesaid, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of the State of California, formed for the purpose and with the corporate power as stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did pretend to consolidate and amalgamate their capital stock, debts, franchises, and rights and did enter into pretended articles of consolidation and amalgamation, by which said two companies agreed to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and purporting to create a new and different corporation by the name and style of "The Southern Pacific Railroad Company," a copy of which pretended articles of consolidation and amalgamation are hereto attached, marked Exhibit "A" and made a part hereof; and did duly sign such articles and publish and file the same as required in that respect by the laws of the State of California; but your orator alleges that the articles of incorporation of said two companies respectively, and neither of them, authorized or empowered said companies or either of them to enter into any consolidation or amalgamation with any other railroad company, and did not authorize them or either of them to sell or transfer its entire railroad to any

other railroad company; and your orator alleges that such pretended articles of consolidation and amalgamation were illegal and void, and were unauthorized and prohibited by the laws of the State of California, and were unauthorized and prohibited by the laws of the United States; and were entered into without any authority from the Congress of the United States, or any other competent authority; and by entering into such pretended articles of consolidation and amalgamation said Southern Pacific Railroad Company, which was named in said act of Congress of March 3, 1871, forfeited, abandoned and released to the United States all the lands granted by said act of Congress of March 3, 1871, and all the rights, grants, franchises and privileges conferred by said act, and all right to earn or acquire any and all lands under said act.

#### XIV.

Your orator is informed and believes, and so alleges the fact to be, that the Southern Pacific Railroad Company which is defendant herein, claims to have pretended patents issued by the United States in due form of law to it said Southern Pacific Railroad Company, purporting to convey to said company a portion of the land in suit herein, but which lands are unknown to your orator; but your orator alleges that if any such patents were issued they were issued illegally and without any authority of law, and are illegal and void.

## XV.

Your orator is informed and believes, and so alleges the fact to be, that certain of the defendants herein, but which defendants are unknown to your orator, claim to be bona fide purchasers for value from the Southern Pacific Railroad Company, the corporation named in said act of Congress of March 3, 1871, and claim that their rights to certain tracts of land are protected and confirmed by the act of Congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes." (See 24 Statutes, 556.)

## XVI.

Your orator further alleges and shows unto the Court that defendants D. O. Mills and Garret L. Lansing have a mortgage or deed of trust from defendant Southern Pacific Railroad Company, covering or purporting to cover the above described lands, to secure the payment of certain indebtedness of said defendant company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles and San Bernardino and Ventura counties, in which said lands are situated, and constitutes a cloud upon the title of your orator.

## XVII.

Your orator further alleges that said lands above described are naturally timbered or wooded lands and valuable for the timber and wood thereon; and that defendants herein, while claiming and pretending to own some interest in said lands, at various and divers times during the last five years, at many and divers times to your orator unknown, have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, and carried away such timber and trees and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land, and unless enjoined will do so, to the great and irreparable injury of your orator.

## XVIII.

Your orator further shows that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

## XIX.

Your orator is informed and believes, and so alleges the fact to be, that defendant Southern Pacific Railroad Company, while pretending and claiming to own some interest in said lands, at various and divers times during the past ten years to your

orator unknown, by pretended contracts and conveyances has pretended to sell and convey large portions of said lands to the other defendants herein, the amount and descriptions of which are unknown to your orator, and has thus realized from wood and timber on said land large sums of money which it has appropriated and converted to its own use.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and to fully answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written they are respectively required to answer, that is to say:

Said defendant Southern Pacific Railroad Company is required to state: (1) the names of all of the pretended purchasers of said lands or any portion thereof from said company; (2) the amounts and descriptions of lands so pretended to be sold; (3) all moneys realized from said defendants respectively by said company; (4) each and all of said defendants are required to state the nature

and extent of their pretended claim or claims to said lands.

And to the further end, therefore, that plaintiff may have that relief which it can only obtain in a court of equity, and that said defendants may answer the premises, your orator prays that, if it shall be found that commissioners, pretending to be appointed by the President of the United States for that purpose, have reported that said pretended railroad and telegraph line from Tehachapi Pass, via Los Angeles, to the Colorado River, have been constructed and completed in a good, substantial and workmanlike manner as in all respects required by said act of March 3, 1871, heretofore referred to, and by such report that such pretended railroad has been pretended to be accepted by them or by the President of the United States, and that such pretended report or reports constitute a cloud upon the title of your orator to said lands, then your orator prays that such pretended report or reports may be set aside, annulled and canceled.

And your orator further prays that said articles of consolidation and amalgamation dated August 12, 1873, between said Southern Pacific Railroad Company and said Southern Pacific Branch Railroad Company may be set aside, annulled and canceled, and that the contract of sale therein set forth, by which the Southern Pacific Railroad Company

named in said Act of Congress of March 3, 1871, purports to sell and convey to the pretended consolidated company purported to be created by such articles of all its rights, grants, privileges, assets and property, and all the rights, grants, privileges, property, assets and lands granted and conferred by the United States by said Act of Congress of March 3, 1871, to the Southern Pacific Railroad Company therein named, may be set aside, annulled and canceled.

And your orator further prays that said mortgage and deed of trust executed by said Southern Pacific Railroad Company, defendant herein, to D. O. Mills and Garrit L. Lansing as trustees, may be set aside, annulled and canceled.

And your orator further prays that its title to said lands may be quieted, and that defendants and each of them be barred and estopped from having asserting or claiming any right, title or interest therein adverse to your orator; and your orator prays that said pretended patent from the United States to the Southern Pacific Railroad Company may be set aside, canceled and annulled, and that defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land.

And your orator further prays that an account may be taken by and under the direction and de-



cree of this Honorable Court for all moneys and profits realized by said defendants from wood, timber and trees taken from said land, and for all moneys and profits realized by defendant Southern Pacific Railroad Company from the pretended sale of said lands.

And your orator further prays that, if it shall be found that any of the defendants herein are bona fide purchasers for value of any of said lands within the meaning of said Act of Congress of March 3, 1887, then your orator prays that such defendants may be protected in their title to said lands by decree of this Honorable Court, and that your orator may have judgment against defendant railroad company for the sum of two dollars and fifty cents per acre for all such lands, if any, which this Honorable Court may find to be held by defendants herein as such bona fide purchasers for value.

And your orator prays for such other and further relief as the Court may deem equitable in the premises.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and Solicitor for Complainant.

W. H. H. MILLER,

Attorney General.

[Endorsed]: No. 184. In the U. S. Circuit Court, Southern Dist. of Cal. United States vs. Southern Pacific Railroad Company et al. Amended Bill. Received Copy of within Amended Bill for J. D. Redding, Solicitor for Defendants in Pursuance of Rule 49 of the Circuit Court. Wm. M. Van Dyke, Clerk. Filed September 25th, 1891. Wm. M. Van Dyke, Clerk. Joseph H. Call, Sol. for Compl.

*In the Circuit Court of the U. S., Ninth Circuit,  
Southern Dist., Cal.*

184.

UNITED STATES,

Complainant,

vs.

SOUTHERN P. R. R. CO. and Many Others,

Respondents.

**Order of Substitution of Certain Party Respondent  
in Case No. 184.**

In the above-entitled cause it appearing that one of the respondents, namely, The Atlantic and Pacific Fibre Importing and Manufacturing Co., Limited, has sold its lands involved in this cause to Jackson Alpheus Graves, and the deed of sale having been exhibited to this Court, and it appearing that said Graves is the proper party respondent instead of said company.

Now, therefore, on motion of Jos. D. Redding, solicitor for all of said respondents, it is ordered that Jackson Alpheus Graves be entered as one of the respondents in this cause in the place and stead of the Atlantic and Pacific Fibre Importing and Manufacturing Company (Limited), furthermore ordered that said respondent, Graves, by his solicitor, Jos. D. Redding, shall have thirty (30) days from the signing hereof in which to plead, demur or answer to the bill of complaint.

ROSS,  
District Judge.

[Endorsed]: 184. Circuit Court U. S. of A.,  
Complainant, vs. S. P. R. R. Co. et al., **Respts.**  
Order of Substitution of Certain Party Respondent.  
Filed Apr. 25, 1893. Wm. M. Van Dyke, Clerk.  
———, Deputy.

*In the Circuit Court of the United States, Ninth  
Circuit, Southern District of California.*

No. 184.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

The Southern Pacific Railroad Company and D. O.  
Mills and Garrit L. Lansing, Trustees, The  
City Brick Company, Atlantic & Pacific Fibre  
Importing and Manufacturing Company, Lim-  
ited, Julius Abrahamson, Hugo Abrahamson,  
Mrs. Jesus Ord de Andrade, Mrs. Thomas Al-  
lison, Mrs. Mary Backman, Mrs. Matilda L.  
Barber, Henry A. Barclay, E. T. Barber,  
Thomas N. Beck, A. M. Benham, Jesse Martin  
Blanchard, E. H. Blood, Ira H. Bradshaw,  
B. B. Briggs, Philomela T. Burrell, Frederick  
H. Busby, A. W. Butler, H. A. Bond, William  
H. Carlson, V. E. Carson, B. F. Carter, Harry  
Chandler, Fred Chandler, Walter S. Chaffee,  
J. N. Chapman, F. O. Christensen, Mrs. L. C.  
Chormicle, Byron O. Clark, George Claussen,  
Clarence T. Cleve, Nicholas Cochems, Nathan  
Cole, Jr., Peter Cook, I. D. Cory, Seaton T.  
Cull, Stefano Cuneo, J. A. Dahl, Andrew J.  
Darling, Thomas A. Delano, Richard Dillon,

John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmount Fruit Land Company, George W. Fentress, S. W. Ferguson, William Ferguson, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grossner, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealy, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. J. Lanterman, Thomas B. Lawhead, L. B. Lawson, M. Fetra, Stephen L. Leighton, John Robarts and G. L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, Deceased, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathia-

son, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossie Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. H. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, William B. Ralphs, James B. Randol, C. P. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Orwan, S. D. Savage, Jacob Scherer, George W. Seifert, Luciano Sequoia, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbarista Sinaco, J. S. Slausson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J.

Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Elleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysett, George Vilas, Alden R. Vining, Daniel A. Wanger, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moyer Wicks, Mrs. Jennie Wicks, Mary C. Williams, C. N. Wilson, R. N. C. Wilson, J. Youngblood and J. A. Graves,  
Defendants.

**Answer to Amended Complaint in Case No. 184.**

Now comes the respondents in the above-entitled cause and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joseph H. Call, as Special Assistant U. S. Attorney, and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto answering, say:

I.

That said respondents aver that the Southern

Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last mentioned state.

And the respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadalupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof have been, or at the time of, or at any time since, the filing of the bill of complaint in this suit, were or have been, or that they or any of them are now, owned by the United States, by title in fee simple or otherwise; they deny that the complainant during said times or at the time of or at any time since the filing of the bill of complaint in this suit was or has been, or that it now is, in possession of said lands or any of them, and allege on the contrary that the said lands described in the said bill, long before the filing of said bill were granted by the complainant to the respondent, the Southern Pacific Railroad Company, and thereafter were and have been, for the most part if not entirely, in its possession, or the possession of its grantees, so far



as any person or party was in actual possession thereof.

## II.

The said respondents admit that by an Act of Congress approved July 27, 1866, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast"; Congress incorporated the Atlantic and Pacific Railroad Company and granted to said Company to aid in the construction of a railroad and telegraph line in said Act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and the limitations in said Act mentioned, to which said Act of Congress reference is hereby made. U. S. Stats., Vol. XIV, p. 292. The said respondents admit that sections 3 and 18 of said Act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals, this defendant refers to the whole of said Act of Congress.

The said respondents are uninformed as to whether the said Atlantic and Pacific Railroad Company only accepted said grant, and therefore controvert the allegation on that behalf, in the bill herein contained; they admit upon information and belief that the Atlantic and Pacific Railroad Company began to construct a railroad in the State of Missouri, but they

deny that it ever proceeded to or did construct any portion of any railroad in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad, under or in accordance with said Act, from Springfield, Missouri, by way of the points or places named in said Act, or in the time or manner provided in said Act, or otherwise, to the Pacific Ocean, and deny that it ever lawfully located, or adopted or designated any part of said line in the State of California; and deny that on or about the — day of —, 1866, or at any other time, said company did file any such plat in the office of the Commissioner of the General Land Office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein or any of them fell within the twenty mile limits of any such line or were ever lawfully withdrawn from market or reserved for or for the benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map thereof filed in the

office of the Commissioner of the General Land Office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California nor constructed any part of a railroad in said state, under or according to the Act of Congress approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location, or anything else than an attempted or pretended designation of a general route for a railroad from — Francisco to the Needles, and such pretended location or designation of route was a colorable and fraudulent location or designation of an unauthorized and impracticable line. The Secretary of the Interior never undertook to accept such pretended location or designation as anything else than a designation of a general route, and no right to or interest in any public lands was or could be acquired by said railroad company by reason of any such attempted location or designation or any act of acceptance thereof; and the decision of a Secretary of the Interior holding

that such a general route was authorized by the Act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct or locate a line to San Francisco, which last mentioned decision still remains in full force and effect, so far as the Interior Department is concerned; and as these defendants are advised and believe, and therefore aver, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a route for a railroad upon the route referred to, was unauthorized and void, and in violation of the rights acquired by and vested in the Southern Pacific Railroad Company.

These respondents ask leave to refer to said decisions, and to file copies thereof herein, if deemed necessary.

Respondents admit and aver that the greater part, but not all the lands in suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad from San Francisco to the Needles, and the greater part, but not all thereof are situated within twenty miles of the South-

ern Pacific Railroad and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said Act or any other Act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believe and therefore aver that under said Act of Congress, the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress, along and opposite said line, and that the only right which the Atlantic and Pacific Railroad Company ever acquired to construct any line of railroad in the State of California was the right to construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company, but to the southerly thereof, and through the San Gorgonio Pass to the Pacific in the vicinity of San Pedro.

### III.

The said respondents admit that by section 23 of an Act of Congress, approved March 3, 1871 (U. S. Stats., Vol. 16, p. 573), entitled "An Act to incor-

porate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the Act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

#### IV.

The said respondents admit that by the Act of Congress, approved July 6, 1866, entitled "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California

theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said Act, but they deny that the same in any wise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said Act of 1886, or has at any time since, been constructed in the State of California.

#### V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint and they admit that they claim the same, and aver that they acquired and became entitled to said lands, under and by virtue of the said Act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof and duly designated and located the route and line of its road between the points in that behalf mentioned in said Act and within the time and manner in said Act provided on that behalf, such designation and location being made by plat or map thereof,

which it filed in the office of the Commissioner of the General Land Office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit. They aver that such map or plat was duly accepted by the Secretary of the Interior as designating the line of its road between the points mentioned in said Act and in accordance with said Act of Congress and for twenty years and over the Interior Department held and conclusively adjudged that the grant to said Southern Pacific Railroad Company under said Act became effective and attached to the lands granted thereby and involved in this suit, on the 3d day of April, 1871, and during all that period the transactions between the complainant and the said Southern Pacific Railroad Company were based upon that claim by the railroad company and its acceptance and adoption by the complainant; and the transactions between said railroad company and the other defendants in respect to lands involved in this suit, were and have been based upon such action, determination and rulings of the Interior Department of the United States, and they aver that afterward maps and plats were filed in the office of the Commissioner of the General Land Office of its line of railroad as built from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River under and in pursuance of the provisions of said Act of



March 3, 1871, such last mentioned maps and plats having been so filed on the following dates, viz.:

Section 1, May 7, 1874.

Section 2, November 13, 1875.

Section 3, July 19, 1876.

Section 4, February 28, 1877.

Section 5, December 28, 1877.

They deny that the located or designated line of route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as the attempted or pretended line of route, or as any lawfully designated or located line of route, of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be or are at any place where the designated and located line of the Southern Pacific Railroad Company aforesaid, and any lawfully designated or located line of the Atlantic and Pacific Railroad Company would be or are upon the same general line or would have intersected or intersect each other. They deny that if the Southern Pacific Railroad Company had, as it did designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River as claimed by these respondents or between such terminal points at all, that such route would have been upon the same general line as the pretended route of the Atlantic and Pacific Railroad Company as alleged in said bill to have been located

by it or any line or route which could have been lawfully designated or located by said Atlantic and Pacific Railroad Company under the Act of Congress of July 27, 1866, above referred to or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located or designated in the State of California or any limits of the grant for such company ever lawfully fixed or in any wise defined or ascertained and deny that the lands in suit fell or fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained that none of said lands were covered by the grant to the Southern Pacific Railroad Company and that none of said lands were of the category of lands which were to be granted to said company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d day of April, 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the Commissioner of the General Land Office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the Commissioner of the General Land Office under date of April 21st,

1871, issued instructions to the registers and receivers of the proper United States District Land Offices in California to withdraw from sale or location, pre-emption or homestead entry all the odd-numbered sections of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the date of such orders for withdrawal, were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked Exhibit "A," a certified copy of the official diagram defining and marking the twenty and thirty mile limits opposite said railroad is herewith filed and made part of this answer marked Exhibit —.

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23d section of the said act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Railroad Company attempted or pretended to designate or locate its general route or line for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfillment of the provisions of the said Acts of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of the United States, and maps thereof duly filed in the General Land Office as above stated.

And these respondents ask leave to refer to and exhibit herein, certified transcripts from the Department of the Interior at Washington to show such maps and the action of said Commissioners and of the President of the United States and the Interior Department in this matter.

## VI.

These respondents allege that the line of route for the said Railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River and for all the route between the terminal points named in said Act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said Act of Congress, and they deny that said line of route is

upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

## VII.

These respondents admit that the greater part but not all of the lands in suit herein are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad from San Francisco to the Needles, but they deny that they are situated within twenty miles or any other distance, of any lawfully designated or located route or line of route of said railroad company or within any lawful limits of any grant to said Company. They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year A. D. 1866, that they were and have been all the time from that year down to and including the 3d day of April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge or understanding, or general knowledge or understanding as to the mineral character thereof.

## VIII.

Replying to paragraph eight of the Bill of Complaint these respondents deny the allegations of said paragraph and each of such allegations and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof to the said Southern Pacific Railroad Company for and upon a full and executed consideration from the complainant and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States legally issued and duly authenticated.

And these defendants further say, that so far as the right of way of the Southern Pacific Railroad Company one hundred feet in width on each side of its railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River and its grounds for station buildings, workshops, depots, machine-shops, switches, sidetracks, turntables and water stations are concerned, it claims and is entitled to the same under and by virtue of the provisions of section 23 of the Act of March 3, 1871, hereinabove referred to, which conferred upon the Southern Pacific Railroad Company of California all the rights, grants and privileges granted to said Southern Pacific Railroad Company of California, by the Act of July 27th, 1866, including those specifically

mentioned and referred to in section 2 of said last-mentioned act; and it avers that at the time the pretended line of the Atlantic and Pacific Railroad Company from San Francisco to the Needles is pretended to have been designated by a plat thereof filed in the office of the Commissioner of the General Land Office, the United States did not have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights, to the said right of way one hundred feet in width on each side of said railroad of said Southern Pacific Railroad Company, or such ground for station buildings, workshops, depots, machine-shops, switches, sidetracks, turntables and water stations, but such right of way and lands had been reserved, granted and appropriated to and for the Southern Pacific Railroad Company and were subject to its claims and rights for the purposes above stated, and no right or claim of the Atlantic and Pacific Railroad Company present or prospective thereto or in respect thereof ever did attach or could have attached thereto or to any part thereof.

### IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles to the Colorado River has been constructed by the Southern Pacific Railroad Company within

the time, and in the manner provided by said Act of Congress of March 3, 1871, herein referred to, and that Commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said act, and these respondents ask leave to refer to the reports of the Commissioners now on file in the Department of the Interior in Washington City, and to produce and file herein certified copies of said reports. They deny that any such claims are pretenses, or are unfounded and aver that the Southern Pacific Railroad Company named in said Act of Congress of March 3, 1871, did construct the said railroad and telegraph line between said terminal points within the time and in the manner provided by said Act of Congress and deny the averments to the contrary thereof in said bill contained.

### X.

These respondents admit that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto." It admits that



said act is printed in the Statutes of California, 1861, at page 607 and prays to refer thereto.

## XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company" was formed for the purpose and with the corporate powers, as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego in said State; thence eastward through said county of San Diego to the eastern line of the State of California there to connect with a contemplated railroad to the Mississippi River; and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

## XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real, but

they deny that they entered into pretended articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid or any of them and to the amendatory articles of the Southern Pacific Railroad Company filed ———. They deny that by any such articles of agreement of consolidation and amalgamation, or by any consolidation or amalgamation a different capital was made, any substantially new stock issued, or a new or different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation. They pray leave to refer to the Articles of Incorporation of the consolidating companies if in any wise material to this suit. They allege that said consolidation and amalgamation of said corporation were authorized by the laws of California and by the laws

of the United States so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof; they deny that such consolidation and amalgamation was unauthorized by the laws of the State of California or without the consent of said State, or was unauthorized by the laws of the United States, or without authority from the United States, or was, or is illegal or void.

### XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation, organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company and entered into articles of consolidation and amalgamation of which Exhibit "A" attached to the plaintiff's bill is a copy, and that said articles were duly signed,

published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies they pray leave to refer to the same if in any wise material to this suit; and they pray leave to refer to the laws of the State of California as existing in and prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of that State.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States or were entered

into without authority from the Congress of the United States, or without other competent authority, but on the contrary they aver that the consolidation and amalgamation of said railroad companies was made in conformity with the laws of the State of California whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the Act of Congress, of March 3, 1871, forfeited, abandoned or released to the United States all or any part of the lands granted to it by said Act of Congress or all or any rights, grants, franchises or privileges conferred by said act, or all or any right to earn or acquire any and all lands under said act.

#### XIV.

These respondents admit that the Southern Pacific Railroad Company which is defendant herein claims to have, and they aver that it has patents issued by the United States to it in due form of law, purporting to convey and conveying to said company a portion of the lands in suit herein. It avers that said patents were real and not pretended and were duly recorded in the General Land Office before they were delivered to said company, and still re-

mained so of record, and since the delivery thereof, the same have been recorded in the county of Los Angeles, and ——— in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally or without authority of law or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the same and to present and file as evidence in this suit, duly certified copies thereof, if deemed necessary.

#### XV.

Replying to paragraph XV of the complainant's bill these respondents admit that the defendants and respondents other than the Southern Pacific Railroad Company claim to be and they and each of them aver that they are in each and every instance, bona fide purchasers for value received, without notice, from the Southern Pacific Railroad Company, a corporation named in said Act of Congress of March 3, 1871, and they further aver that the time of the purchase in each instance by said respondents and defendants and each of them from the said Southern Pacific Railroad Company is set forth in Exhibit "B" hereto attached and made part of this answer and also copies of the deeds and parties to

the deeds and contracts of sale and the contents thereof are hereto attached and marked Exhibits "G" and "H" and made a part of this answer. That in said Exhibit "B" is also given the date and day of each purchase made by said defendants and respondents and each of them. That at the time the respondents, other than the Southern Pacific Railroad Company purchased said lands as are set forth in said Exhibit "B" said Southern Pacific Railroad Company the vendor, at that time, was the owner and seized in fee of said lands and said respondents entered into the possession of the said lands all of which are involved in this suit under said purchase and the consideration in each instance paid by the said respondents to the said Southern Pacific Railroad Company, which appears in each instance opposite the name of each respondent in said Exhibit "B," was a bona fide one and was paid truly and in a bona fide manner and without notice at the time of said payment or at any time prior thereto in each instance. And said respondents other than the Southern Pacific Railroad Company aver that they have no knowledge as to which, if any, of the correspondents and codefendants herein claim any right in the lands in suit, or any part or parcel thereof, under or by virtue of an Act of Congress approved March 3, 1887 (24 Stat. 556), referred to in the bill of complaint.

## XVI.

These respondents admit that the respondents D. O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above-described lands to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands or any part thereof which can be clouded or injuriously or otherwise affected thereby.

## XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded lands and valuable for the timber and wood thereon. While admitting that they claim but denying that they pretend to own an interest in said lands these defendants deny that they or their grantees have ever unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon and deny that said lands, timber or trees or any thereof were at any time since the taking effect of the grant to the defendant, the Southern Pacific Railroad Company above referred to, the property of the complainant in this suit. They admit and aver that the South-



ern Pacific Railroad Company and its grantees have at various and divers times carried away timber and trees from said lands and applied the same to their own use and are now removing from said land wood cut thereon and are intending to and unless enjoined therefrom will chop down other trees on said land, but they deny that any such acts were, are or will be in any wise unlawful or have resulted or will or could result in any injury to the complainant.

### XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars exclusive of interest and costs.

### XIX.

They admit and aver that the defendant, the Southern Pacific Railroad Company, while claiming (but not pretending) to own an interest in said lands, has at various and divers times during the past ten years by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretended to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money which it and they have appropriated to its and their own use.

### XX.

The respondent, the Southern Pacific Railroad

Company further answering states that the schedule hereto annexed, marked Exhibit "B," and made part of this answer, is a correct schedule of all such lands claimed in this suit as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at the time of such sales and each of them the said defendant railroad company was the owner of the lands so sold, and that it is now the owner of all of such lands which have not been so sold by it.

## XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent the Southern Pacific Railroad Company, and that they purchased the same in good faith and for a valuable consideration believing and still believing that at the time of their said purchase of said lands they were owned by

absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Willis Drummond, Commissioner of the General Land Office, dated April 21, 1871, to the Register and Receiver, Los Angeles, California, order of withdrawal of lands within the limits of the Southern Pacific Railroad Company's Branch Line.

Exhibit "B,," referred to on page 22 of the answer, being a statement, under date of July 3, 1890, of the condition on the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings: "Contract No. Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge. Acres. Amount sold for. Surveyed or unsurveyed. A & P. R. R. Co. Limits. S. P. R. R. Limits. Main, Branch Line. Selected or not selected by S. P. R. R. Co. No. and date of selection list. Costs of surveying, selecting and conveying, which is divided into three columns as follows: Surveying fees, selected Reg. and Rec. fees, costs of conveying. Remarks."

Exhibit "C," certified copy of List No. 21 of lands

selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23d section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District.

Exhibit "D," certified copy of list numbered 25 of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23d section of the Act of Congress approved March 3, 1871, on account of the line known as the branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District; together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C-2," certified copy of a letter to the Commissioner of the General Land Office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1889, by said Railroad Company of \$12.50 on account of conveying the lands located at the Los Angeles, California Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the Act of Congress of March 3, 1871, it was found that the line of route which said Company was required to adopt and did adopt; was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route of road adopted or designated by the Atlantic and Pacific Railroad Company in the State of California or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean as said grant was made to the said Company by the said Act of Congress of July 27, 1866, or by any Act of Congress, or as said route may have been in any wise located or adopted by said Company (if it ever was so located or adopted) was, or is, upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located or at all; re-

spondents further deny that the lands in suit herein were at the intersection of any such two lines of route or at the place where any such two routes were or are upon the same general lines and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the grant to the said Southern Pacific Railroad Company, under said Act of March 3, 1871.

### XXIII.

And these defendants further answering, say that the Southern Pacific Railroad Company, to which the grant of lands was made by the Act of Congress of March 3, 1871, still exists under the laws of the State of California under which the same was created, and has at no time caused to exist or surrendered or lost the rights conferred by said act and is the same corporation which is made party defendant to this bill, and that any and all amalgamations or consolidations therewith of other railroad corporations organized under the laws of the State of California have been made in pursuance of and subject to the terms and provisions of the laws of the State of California, and by due and legal authority, and that the United States by constant and continued action of all branches of the Government has recognized the continued existence of the Southern Pacific Railroad Company as the grantee of lands under the Act aforesaid, and has always claimed and exercised, and

still claims and exercises, against the Southern Pacific Railroad Company, notwithstanding the amalgamations from time to time of various other railroad corporations of the State of California with the Southern Pacific Company originally constituted under the laws of said State, all the rights conferred upon the United States, and has demanded and enjoyed the benefit, and still demands and enjoys the benefit, of the performance of all the duties imposed upon the Southern Pacific Railroad Company under or by virtue of the said Act of Congress and each thereof and has claimed and exercised and still claims and exercises the rights and had demanded and enjoyed the benefit of and still demands and enjoys the benefit of the performance of the duties prescribed in said Act of Congress in respect of the line constructed by the Southern Pacific Railroad Company from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River, and is estopped in law and equity from asserting any claim that the Southern Pacific Railroad Company as now existing was not the same corporation named and designated in said Act or that the said railroad was not constructed by the grantee named therein, and that it could not in any event be adjudged in favor of the United States in this suit or otherwise that the said railroad was not constructed by the grantee named in said Act or that the Southern Pacific Railroad

Company as now existing is not entitled to the benefits of the grants named therein without the surrender and abandonment by the United States of its claim to the exercise by it of the rights and privileges heretofore claimed and exercised by it, and to the enjoyment by it of the benefit of the performance of the public duties heretofore claimed and enjoyed by it in respect of the Southern Pacific Railroad Company as from time to time existing and in respect of the said road under and by virtue of the Act of Congress above referred to.

## XXIV.

And these defendants further answering say, that the United States cannot now restore these defendants to the same position in respect to the land grant to the Southern Pacific Railroad Company under said Act of March 3, 1871, and its rights and claims to indemnity for lost lands which it would have had if the United States had not accepted its selections of lands in controversy in this suit and issued patents to the said defendant for such of said lands as have been patented to it, inasmuch as since the date of said patents the United States has permitted other parties to acquire claims to and has granted other parties patents for valuable lands within the indemnity limits of its road under said Act of March 3, 1871, which would prevent this Company from making now as favorable indemnity selections as it might then



have made, and because the acceptance of such selections and issue of such patents has delayed the exercise by said Company of the right of selection of indemnity lands which this Company would have been entitled to, and has deprived it of the use and benefit of the lands which might have been derived thereunder at times when sales thereof might have been made upon terms to the defendant far more favorable than any upon which like lands could now be sold.

### XXV.

And these defendants further answering say, that heretofore and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date on that day to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "E," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said 1st day of April, 1875, and September 25, 1891, duly issued thereunder and sold to and purchased by the public in good faith and for full and valuable consideration, and that of such bonds there are now outstanding in the hands of bona fide holders thereof for value bonds to the amount at their par value of upwards of thirty-one million dollars.

That Garrit L. Lansing named as defendant in this suit has been duly substituted as mortgage trustee thereunder in place and stead of said Lloyd Tevis named as a trustee in said original mortgage.

### XXVI.

And these defendants further answering say, that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and having its principal place of business in the City and County of New York, a further mortgage or deed of trust bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "F," and prayed to be taken as a part of this answer. That negotiable Mortgage Bonds to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit duly issued thereunder and sold to and purchased by the public in good faith, and for full and valuable consideration, and that of such bonds so issued prior to the institution of this suit bonds to the about of six million, nine hundred and eighty-one

thousand dollars are not outstanding in the hands of bona fide holders thereof for value, and that the said Central Trust Company of New York is a necessary party to this suit; and these defendants pray the like effect for the foregoing allegations as if the non-joinder of such Central Trust Company of New York as a party to this suit were specially pleaded herein.

### XXVII.

And these defendants further answering say, that being required so to do by the United States, said Southern Pacific Railroad Company has from time to time paid the following fees and charges to the United States upon and in respect of the lands in controversy in this suit, that is to say:

The sum of six thousand one hundred and thirty-five and 34-100ths (\$6,135.64) dollars as and for surveying and registers and receivers and surveying fees required by the United States in respect of said lands, and that the United States could not in any event or under any circumstances be entitled to recover, maintain or assert any claim to the said lands or cancel or have cancelled the patents heretofore issued to said company in respect thereof until it should have repaid to said railroad company the amounts above mentioned with interest and in all other respects restored the company to the like position in all respects which it occupied at the time when such selections of said lands by the company were accepted

and approved and at the time when the patent therefor was issued to it as aforesaid by the United States.

XXVIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint, contained material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversel, avoided or denied, is true to the knowledge or belief of these respondents, all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for Respondents.

HARVEY S. BROWN, R.,

Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. S. P. R. R. Co. and others, Respondents. Amended Answer. Rec'd copy hereof (except ex-

hibits) May 31, --9—. Joseph H. Call, Spl. Asst. U. S. Atty. Received May 31st, 1893. Wm. M. Van Dyke, Clerk. Filed Ju. 12, 1893. Wm. M. Van Dyke, Clerk. Joseph D. Redding, Solicitor for Respondents, 33-37 Chronicle Building, San Francisco, Cal.

*In the United States Circuit Court, Southern District of California, Ninth Circuit.*

No. 184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
and Others,

Defendants.

**Replication in Case No. 184.**

Replication of the United States to the Answer of  
Southern Pacific Railroad Company and Others,  
Defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insuf-

ficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by this said bill he hath already prayed.

JOSEPH H. CALL,

Special Asst. U. S. Atty. and Counsel for Complainant.

[Endorsed]: No. 184. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Rep. Filed August 2d, 1892. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Asst. U. S. Atty.

**Defendants' Exhibit No. 44 in Case No. 184.**

DEED No. 4719.

To All to Whom these Presents Shall Come:

The Southern Pacific Railroad Company, a corporation duly incorporated and organized under the laws of the State of California, and D. O. Mills and Garrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust, as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter A, and followed by the succeeding letters in regular order to and including the letter G; series A to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; Series B to F, both inclusive, to consist of five thousand bonds each, for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series G to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually;

said series A to bear date April first, eighteen hundred and seventy-five and the said several succeeding series to bear such dates respectively as the Board of Directors of said Southern Pacific Company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the trustees; and that when such sales had been made the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or incumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance on the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Ger-



rit L. Lansing of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the Board of Directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas on the 18th day of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust;

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyances, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney, which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person;

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint, by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden of the city and county of San Francisco and

State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them as aforesaid;

the lands here after described, pursuant to the foregoing conditions, to the "Atlantic and Pacific Fiber Importing and Manufacturing Company, Limited," of London, England, for the sum of five thousand and eighteen  $78/100$  (\$5,018.78) dollars, which sum has been by it fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid:

Now, therefore, in consideration of the premises, and the said sum of five thousand and eighteen (\$5,018.78) .78 dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Atlantic and Pacific Fiber Importing and Manufacturing Company, "Limited," and to its successors and assigns, the following described tracts of land situate, lying and being in the county of Los Angeles, and state of California, to wit:

The southwest quarter (SW.  $1/4$ ) of section seventeen (17); all of fractional section nineteen (19); all

of section twenty-one (21); all of section twenty-seven (27), in township five (5) north or range ten (10) west; the southwest quarter (SW.  $\frac{1}{4}$ ) of section three (3); all of fractional section five (5); all of section nine (9); west half (W.  $\frac{1}{2}$ ) of section eleven (11), in township five (5) north of range eleven (11) west; all of fractional section one (1), in township five (5) north range twelve (12) west, and west half (W.  $\frac{1}{2}$ ) of section No. thirty-three (33), in township six (6) north of range eleven (11) west; all in San Bernardino base and meridian, containing five thousand and eighteen (5,018.78) 78 acres according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said Atlantic and Pacific Fiber Importing and Manufacturing Company, Limited, its successors and assigns, to its and their use and behoof forever.

In testimony whereof, the said Southern Pacific Railroad Company has caused these presents to be signed by its vice-president and secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney,

Jerome Madden, have subscribed their names and affixed their seals, this twenty-third (23d) day of July, A. D. 1885.

CHAS. F. CROCKER,

Vice-Pres. S. P. R. R. Co.

J. L. WILLCUTT,

Sec. S. P. R. R. Co.

D. O. MILLS, [Seal]

GERRIT L. LANSING, [Seal]

Trustees.

By JEROME MADDEN,

Their Joint Attorney in Fact,

[Seal of Corporation]

NOTE.—The word “heirs” in 13th and 37th lines stricken out and the words “successors” substituted therefor, and the words from “excepting” in the 27th line to “also” in the 33d line stricken out before signing.

CHARLES L. TORBERT,

Notary Public.

State of California,

City and County of San Francisco,—ss.

On this twenty-third (23d) day of July, in the year one thousand eight hundred and eighty-five (1885), before me, Charles J. Torbert, a notary public in and for said city and county of San Francisco, State of California, personally appeared Charles F. Crocker, known to me to be the vice-president, and J. L. Will-

cutt, known to me to be the secretary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also, on this, the day aforesaid, before me, the notary public aforesaid, personally appeared Jerome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowledged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Notarial Seal] CHARLES J. TORBERT,  
Notary Public, in and for the city and county of  
San Francisco, State of California.

[Endorsed]: Deed No. 4719. Southern Pacific Railroad Co. D. O. Mills and Gerrit L. Lansing, Trustees, to the "Atlantic and Pacific Fiber Importing and Manufacturing Company, Limited." Deed. Dated July 23d, 1885. Recorded at request of J. Drew Gay, July 29, 1885, at 54 min. past 2 P. M. in Book 144, page 179, Records of Los Angeles County. Chas. E. Miles, County Recorder. By W. B. Pritchard, Deputy. 3.50 pd. U. S. Court, Southern

184 *Southern Pacific Railroad Company et al.*

District of California. United States vs. S. P. R. R.  
Co. 184. Master's and Examiner's Exhibit No. 44.  
E. H. Lamme, Master and Examiner in Chancery for  
Respondent.

*In the Circuit Court of the United States in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants.

I hereby certify that the foregoing is a full, true,  
complete and correct copy of the original of Defend-  
ants' Exhibit No. 44 introduced before me in said  
cause and the original of which was withdrawn by  
stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

[Endorsed] Filed Feb. 23, 1894. Wm. M. Van  
Dyke, Clerk. ———, Deputy.

**Defendants' Exhibit No. 45 in Case No. 184.**

No. 4720.

**SOUTHERN PACIFIC RAILROAD COMPANY.  
LAND DEPARTMENT.**

This agreement, made at San Francisco, California, this twenty-third (23) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and The "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part, witnesseth:

That the party of the first part, in consideration of the covenants and agreements of the party of the second part, hereinafter contained, agrees to sell to the party of the second part, the following tracts of land, situated in the county of Los Angeles, State of California, and known and designated on the public surveys of the United States as: All of fractional sections three (3), five (5) and seven (7); all of section nine (9); north half (N.  $\frac{1}{2}$ ) and southeast quarter (SE.  $\frac{1}{4}$ ) section of seventeen (17), in township five (5) north of range ten (10) west; all of fractional section one (frac'l); fractional north half (frac'l N.  $\frac{1}{2}$ ) southeast quarter (SE.  $\frac{1}{4}$ ) of section three (3); east half (E.  $\frac{1}{2}$ ) of section eleven (11), in township five (5) north of range eleven (11) west; all of section twenty-nine (29); all of fractional

section thirty-one (frac'l 31), and all of section thirty-three (33), in township six (6) north of range ten (10) west; all of section thirteen (13), fifteen (15), twenty-one (21), twenty-three (23), twenty-five (25), twenty-seven (27), east half (E.  $\frac{1}{2}$ ) of thirty-three (33) and all of thirty-five (35) in township six (6) north of range eleven (11) west; all of San Bernardino base and meridian, containing eleven thousand two hundred and fifty-eight  $\frac{36}{100}$  ( $11,258.\frac{36}{100}$ )  $\frac{36}{100}$  acres, for the sum of eleven thousand two hundred and fifty-eight  $\frac{36}{100}$  (\$ $11,258.\frac{36}{100}$ ) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of eleven thousand two hundred and fifty-eight  $\frac{36}{100}$  (\$ $11,258.\frac{36}{100}$ ) dollars (which sum has this day been fully paid) in United States gold coin of the present standard of value, and, also, to pay all taxes and assessments that may at any time belevied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall and shall be paid by said party of the second part bear interest at the rate of seven per cent per annum,



to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed that upon the punctual payment of said taxes and assessments and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed that the party of the second part may at once enter upon, take and hold possession of said land.

It is further agreed between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and, that in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant;

Therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title

will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said

grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignees to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its secretary and land agent, and the party of the second part has signed its name hereto, by its agent.

JEROME MADDEN,  
Land Agent.

J. L. WILLCUTT,  
Secretary.

ATLANTIC AND PACIFIC FIBRE IM-  
PORTING AND MANUFACTURING  
CO., L'D. [Seal]

By J. DREW GAY, [Seal]  
Its Agent.

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Schedule of Prices at Which the Lands Described  
in This Contract Have Been Sold this Twenty-  
third (23d) Day of July, 1885.

Fraction	Sec.	Tp.	Range.	E. & M.	No. of Acres.	Rate per Acre.	Amount.
All of fractional	3	5 N.	10 W.	S. B.	\$669.08	\$1.00	\$669.08
All of fractional	5	5 N.	10 W.	S. B.	661.66	1.00	661.66
All of fractional	7	5 N.	10 W.	S. B.	611.40	1.00	611.40
All of	9	5 N.	10 W.	S. B.	640.00	1.00	640.00
N. $\frac{1}{2}$	17	5 N.	10 W.	S. B.	320.00	1.00	320.00
S. E. $\frac{1}{4}$	17	5 N.	10 W.	S. B.	160.00	1.00	160.00
All of fractional	1	5 N.	11 W.	S. B.	650.92	1.00	650.92
Frac'l N. $\frac{1}{2}$	3	5 N.	11 W.	S. B.	342.52	1.00	342.52
S. E. $\frac{1}{4}$	3	5 N.	11 W.	S. B.	160.00	1.00	160.00
E. $\frac{1}{2}$	11	5 N.	11 W.	S. B.	320.00	1.00	320.00
All of	29	6 N.	10 W.	S. B.	640.00	1.00	640.00
All of fractional	31	6 N.	10 W.	S. B.	642.78	1.00	642.78
All of	33	6 N.	10 W.	S. B.	640.00	1.00	640.00
All of	13	6 N.	11 W.	S. B.	640.00	1.00	640.00
All of	15				640.00	1.00	640.00
All of	21				640.00	1.00	640.00
All of	23				640.00	1.00	640.00
All of	25				640.00	1.00	640.00
All of	21				640.00	1.00	640.00
E. $\frac{1}{2}$	33				320.00	1.00	320.00
All of	35				640.00	1.00	640.00

JEROME MADDEN,

Land Agent.

State of California,

County of Los Angeles,—ss

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a notary public in and for said Los Angeles County, residing

therein, duly commissioned and sworn, personally appeared J. Drew Gay, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of Los Angeles, the day and year first above written.

[Notarial Seal]

W. H. GRAY,  
Notary Public.

State of California,

City and County of San Francisco,—ss.

On this thirteenth day of January, A. D. one thousand eight hundred and eighty-six, before me, Holland Smith, a notary public, in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city

and county of San Francisco, the day and year last above written.

[Notarial Seal]

HOLLAND SMITH,

Notary Public.

307 Montgomery St.

In consideration of the above and foregoing assignments to me, I hereby agree with the said Atlantic and Pacific Fibre I. & M. Co. and with the said Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said contract, No. 4720, required to be done and performed by the said assignor.

March 18, 1893.

J. A. GRAVES. [Seal]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company, hereby consents to the annexed assignment of the within contract, No. 4720, to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY,

By JEROME MADDEN,

Its Land Agent.

*In the Circuit Court of the United States in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants.

I hereby certify that the foregoing is a full, true complete and correct copy of the original Defendants' Exhibit No. 45, introduced before me in said cause and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

[Endorsed]: Unpatented Lands. No. 4720. Contract for a Deed. Southern Pacific R. R. Company to The "Atlantic and Pacific Importing and Manufacturing Company, Limited." Dated July 23d, 1885. Recorded at Request of Wells, Fargo & Co. April 16, 1886, at 4 Min. past 9 A. M., in Book 158, page 23, Records of Los Angeles County. Frank A.

Gibson, County Recorder. By ————. 4.30  
Due. U. S. Cir. Court, Southern District of Cali-  
fornia. United States vs. S. P. R. R. Co., 184 Mas-  
ter's and Examiner's Exhibit No. 45. E. H. Larame,  
Master and Examiner in Chancery. For Defendant.  
Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.  
———, Deputy.

**Defendants' Exhibit No 46 in Case No. 184.**

No. 4720.

**SOUTHERN PACIFIC RAILROAD COMPANY.  
LAND DEPARTMENT.**

This agreement, made at San Francisco, Cali-  
fornia, this twenty-third (23d) day of July, A. D.  
1885, between the Southern Pacific Railroad Com-  
pany, party of the first part, and the "Atlantic and  
Pacific Fibre Importing and Manufacturing Com-  
pany, Limited," of London, England, party of the  
second part, witnesseth: That the party of the  
first part, in consideration of the covenants and  
agreements of the party of the second part herein-  
after contained, agrees to sell to the party of the  
second part, the following tracts of land, situated in  
the county of Los Angeles, State of California, and  
known and designated on the public surveys of the  
United States, as all of fractional sections one (1)  
three (3) and five (5). All of sections nine (9),



eleven (11), thirteen (13), fifteen (15), seventeen (17), twenty-one (21), twenty-three (23), twenty-seven (27) and thirty-three (33), in township six (6), north of range twelve (12) west. All of San Bernardino base and meridian, containing seventy-six hundred and sixty-eight ( $7668 \frac{27}{100}$ )  $\frac{27}{100}$  acres, for the sum of seventy-six hundred and sixty-eight  $\frac{27}{100}$  (\$ $7668.\frac{27}{100}$ ) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seventy-six hundred and sixty-eight  $\frac{27}{100}$  ( $7668.\frac{27}{100}$ ) dollars, (which sum has this day been fully paid) in United States gold coin of the present standard of value, and also to pay all taxes and assessments that may at any time be levied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent per annum, and shall be paid by said party of the second part to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part, will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and with the condition that the party of the second part, its successors and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said land.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts

hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and, that in consequence of circumstances beyond its control, it some times fails to obtain patent for lands that seem to be legally a portion of its said grants. Therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first part, shall obtain patent for part of the lands herein

described and shall fail to obtain patent for the remainder of them, this contract shall, in all its provisions, be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part, and that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

And it is further agreed, that this contract shall not be assignable, except by indorsement and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of

the second part has signed its name hereto, by its Agent.

JEROME MADDEN,

Land Agent.

J. L. WILLCUTT,

Secretary.

ATLANTIC & PACIFIC FIBRE IMPORT-  
ING & MANUFACTURING COMPANY,  
LIMITED.

[Seal]

By J. DREW GAY,

[Seal]

Its Agent.

Schedule of Prices at which the Lands Described in  
this Contract Have Been Sold, this Twenty-third  
(23d) Day of July, 1885.

Fraction	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.
All of fractional	1	6 N.	12 W.	S. B.	\$637.98	\$1.00	\$637.98
All of fractional	3	6 N.	12 W.	S. B.	636.17	1.00	636.17
All of fractional	5	6 N.	12 W.	S. B.	634.12	1.00	634.12
All of	9	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	11	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	13	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	15	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	17	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	21	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	23	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	27	6 N.	12 W.	S. B.	640.00	1.00	640.00
All of	33	6 N.	12 W.	S. B.	640.00	1.00	640.00

JEROME MADDEN,

Land Agent.

State of California,  
County of Los Angeles,—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a notary public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gay, known to me to be the person described in and whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of Los Angeles, the day and year first above written.

[Notarial Seal]

W. H. GRAY,  
Notary Public.

State of California,  
City and County of San Francisco,—ss.

On this thirteenth day of January, A. D., one thousand eight hundred and eight-six, before me, Holland Smith, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern Pacific Railroad Company, the corporation that exe-

cuted the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year last above written.

[Notarial Seal]

HOLLAND SMITH,

Notary Public, 307 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic & Pacific Fibre Importing & Manufacturing Co., and with the Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said Contract No. 4721, required to be done and performed by the said assignor.

March 18, 1893.

J. A. GRAVES. [Seal]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company hereby consents to the annexed assignment of the within contract, No. 4721, to J. A. Graves.

**SOUTHERN PACIFIC RAILROAD COMPANY.**

By JEROME MADDEN,  
Its Land Agent.

*In the Circuit Court of the United States in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,

Complainant.

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants.

I hereby certify that the foregoing is a full, true, complete and correct copy of the original of Defendants' Exhibit No. 46, introduced before me in said cause, and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

[Endorsed]: Unpatented Lands. No. 4721. Contract for a Deed. Southern Pacific R. R. Company to The "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Dated July 23d, 1885. Recorded at request of Wells, Fargo & Co., April 16, 1886, at 5 min. past 9 A. M. in Book 155, Page 380, Records Los Angeles County. Frank A. Gibson, County Recorder, by W. B. Pritchard,



Deputy. 3.90 due. U. S. Cir. Court, Southern District, California. United States vs. S. P. R. R. Co. 184. Master's and Examiner's Exhibit No. 46. E. H. Lamme. ———, for Defendant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

**Defendants' Exhibit No. 47 in Case No. 184.**

No. 4722.

**SOUTHERN PACIFIC RAILROAD COMPANY,  
LAND DEPARTMENT.**

This agreement, made at San Francisco, California, this Twenty-third (23d) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part;

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part the following tracts of land, situated in the Counties of Los Angeles and Kern, State of California, and known and designated on the public surveys of the United States as all of fractional section seven (frac'l 7) in township eight (8), north of range fourteen (14) west; all of section five (5); all of fractional section seven (frac'l 7); all of sections (9), eleven (11), thirteen (13), fif-

teen (15), seventeen (17); all of fractional nineteen ( $\frac{1}{2}$  19); all of twenty-one (21), twenty-nine (29) and all of fractional thirty-one ( $\frac{1}{2}$  31) in township eight (8) north, of range fifteen (15) west; all of fractional section thirty-one ( $\frac{1}{2}$  31) in township nine (9) north, of range fifteen (15) west; all of San Bernardino base and meridian, containing eighty-two hundred and seventy-three ( $8273 \frac{34}{100}$ )  $\frac{34}{100}$  acres, for the sum of eighty-two hundred and seventy-three  $\frac{34}{100}$  (\$8273.34/100) dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described and to pay to the party of the first part the said sum of eighty-two hundred and seventy-three  $\frac{34}{100}$  (\$8273.34/100) dollars (which sum has this day been fully paid) in United States gold coin of the present standard of value, and also to pay all taxes and assessments that may, at any time, be levied or imposed upon said land, or any part thereof, and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent per annum, and shall be paid by said party of the second

part to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said land.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and that in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent

or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described; it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first party shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder delay or impede the obtaining of patent for them by party of the first part; and

that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed, in duplicate, by its Secretary and Land Agent, and the party of the second part has signed its name hereto, by its agent.

JEROME MADDEN,

Land Agent.

J. L. WILLCUTT,

Secretary.

ATLANTIC AND PACIFIC FIBRE IM-  
PORTING AND MANUFACTURING  
COMPANY, LIMITED.

[Seal]

By J. DREW GAY,

Its Agent.

Schedule of Prices at Which the Lands Described in  
this Contract Have Been Sold this Twenty-third  
(23d) Day of April, 1885.

Fraction	Sec.	Tp.	Range.	B. & M.	No.	Rate	Amount.
					of Acres.	per Acre.	
All of fractional	7	8 N.	14 W.	S. B.	\$629.06	\$1.00	\$629.06
All of	5	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of fractional	7	8 N.	15 W.	S. B.	628.16	1.00	628.16
All of	9	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of	11	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of	13	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of	15	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of	17	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of fractional	19	8 N.	15 W.	S. B.	631.42	1.00	631.42
All of	21	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of	29	8 N.	15 W.	S. B.	640.00	1.00	640.00
All of fractional	31	8 N.	15 W.	S. B.	636.70	1.00	636.70
All of fractional	31	9 N.	15 W.	S. B.	628.00	4.00	628.00

JEROME MADDEN,

Land Agent.

State of California,  
County of Los Angeles,—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a notary public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gay, known to me to be the person described in, and whose name is subscribed to, the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, in the City and County of Los Angeles, the day and year first above written.

[Notarial Seal]

W. H. GRAY,  
Notary Public.

State of California,  
City and County of San Francisco,—ss.

On this thirteenth day of January, A. D. one thousand eight hundred and eighty-six, before me, Holland Smith, a Notary Public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willeutt, known to me to be the Secretary, of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year last above written.

[Notarial Seal]

HOLLAND SMITH,

Notary Public, 307 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic & Pacific Fibre Importing & Mfg. Co. and with the

Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said Contract No. 4722, required to be done and performed by the said assignor.

March 18th, 1893.

J. A. GRAVES. [Seal]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company hereby consents to the annexed assignment of the within contract No. 4722 to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY,

By JEROME MADDEN,  
Its Land Agent.

[Endorsed]: Unpatented Lands. No. 4722. Contract for a Deed. Southern Pacific R. R. Company to "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Dated July 23d, 1885. Recorded at request of Wells, Fargo & Co., April 15th, 1886, at 30 min. past 8 A. M., in Book 1, Contracts & Agreements, Page 276, Records of Kern County. N. R. Packard, County Recorder. By ———, Deputy. Fees, \$4.60. (Seal of County Recorder.) Recorded at Request of Wells, Fargo & Co., April 20, 1886, at 20 min. past 10 A. M., in Book 159 of Deeds, page 87, Records of Los Angeles County. Frank A. Gibson, County Recorder. By



W. B. Pritchard, Deputy. \$4.10 due. U. S. Cir Court, Southern District, California. United States vs. S. P. R. R. Co. 184. Master's and Examiner's Exhibit No. 47. E. H. Lamme, for Respondents.

*In the Circuit Court of the United States in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,  
et al.,

Defendants.

I hereby certify that the foregoing is a full, true, complete and correct copy of the original of Defendants' Exhibit No. 47 introduced before me in said cause and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

[Endorsed]: Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk.

**Defendants' Exhibit No. 48 in Case No. 184.**

**SOUTHERN PACIFIC RAILROAD COMPANY.  
LAND DEPARTMENT.**

No. 4723.

This agreement, made at San Francisco, California, this twenty-third (23d) day of July, A. D. 1885, between the Southern Pacific Railroad Company, party of the first part, and the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited," of London, England, party of the second part, witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following tracts of land situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as all of fractional sections five (5) and seven (7); all of sections nine (9) and seventeen (17); fractional section nineteen (19); all of sections twenty-one (21) and twenty-nine (29); fractional section thirty-one (31); all of section thirty-three (33), in township seven (7) north, range eleven (11) west; all of fractional sections one (1) and three (3) southwest quarter of northeast quarter (SW. 1/4 of N. E. 1/4), west half of southeast quarter (W. 1/2 of SE. 1/4), and west

half (W.  $1/2$ ) of section eleven (11); all of section thirteen (13), fractional section nineteen (19); all of sections twenty-three (23), twenty-five (25), twenty-nine (29), thirty-three (33) and thirty-five (35), in township seven (7) north, range twelve (12) west; all of section twenty-five (25), in township seven (7) north, range thirteen (13) west; all of fractional sections five (5) and seven (7) in township eight (8) north, range ten (10) west; all of section eleven (11); fractional section nineteen (19); all of section twenty-nine (29); fractional section thirty-one (31), in township eight (8) north, range eleven (11) west; all of sections twenty-five (25) and thirty-five (35), in township eight (8) north, range twelve (12) west; all of San Bernardino base and meridian, containing seventeen thousand seven hundred and sixty-eight ( $17,768 \frac{41}{100}$ )  $\frac{41}{100}$  acres, for the sum of seventeen thousand seven hundred and sixty-eight ( $\$17,768 \frac{41}{100}$ )  $\frac{41}{100}$  dollars, gold coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of seventeen thousand seven hundred and sixty-eight ( $17,768 \frac{41}{100}$ )  $\frac{41}{100}$  dollars (which sum has this day been fully paid), in United States gold coin of the present standard of value, and, also, to pay all taxes and assessments that may

at any time be levied or imposed upon said land, or any part thereof; and if the party of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall bear interest at the rate of seven per cent per annum, and shall be paid by said party of the second part to said party of the first part before he shall be entitled to a conveyance of said land.

It is further agreed, that upon the punctual payment of said taxes and assessments, and interest thereon, and the strict and faithful performance by the party of the second part, its legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, its successors and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said

railroads, and with the condition that the party of the second part, its successors and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is further agreed, that the party of the second — may at once enter upon, take and hold possession of said land.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; and, that in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest) to the party of the second part, all moneys that may have been paid to it by it on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts, by said party of the first part, as per schedule on page 3 hereof; that

said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to it for damages or costs in case of its failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayment herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that it will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the under-

takings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary and Land Agent, and the party of the second part has signed its name hereto, by its Agent.

JEROME MADDEN,

Land Agent.

J. L. WILCUTT,

Secretary.

ATLANTIC AND PACIFIC FIBRE IM-  
PORTING AND MANUFACTURING  
COMPANY, LIMITED, [Seal]

By J. DREW GAY,

Its Agent.

218 *Southern Pacific Railroad Company et al.*

Schedule of Prices at Which the Lands Described in  
this Contract have been Sold this Twenty-third  
(23d) Day of July, 1885.

Fraction	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.
All of fractional	5	7 N.	11 W.	S. B.	\$646.78	\$1.00	\$646.78
All of fractional	7	7 N.	11 W.	S. B.	645.18	1.00	645.18
All of	9	7 N.	11 W.	S. B.	640.00	1.00	640.00
All of	17	7 N.	11 W.	S. B.	640.00	1.00	640.00
All of fractional	19	7 N.	11 W.	S. B.	641.21	1.00	641.21
All of	21	7 N.	11 W.	S. B.	640.00	1.00	640.00
All of	29	7 N.	11 W.	S. B.	640.00	1.00	640.00
All of fractional	31	7 N.	11 W.	S. B.	642.56	1.00	642.56
All of	33	7 N.	11 W.	S. B.	640.00	1.00	640.00
All of fractional	1	7 N.	12 W.	S. B.	643.00	1.00	643.00
All of fractional	3	7 N.	12 W.	S. B.	645.98	1.00	645.98
S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$		7 N.	12 W.	S. B.	440.00	1.00	440.00
W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$	11	7 N.	12 W.	S. B.			
and W. $\frac{1}{2}$		7 N.	12 W.	S. B.			
All of	13	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of fractional	19	7 N.	12 W.	S. B.	645.92	1.00	645.92
All of	23	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of	25	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of	29	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of	33	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of	35	7 N.	12 W.	S. B.	640.00	1.00	640.00
All of	25	7 N.	13 W.	S. B.	640.00	1.00	640.00
All of fractional	5	8 N.	10 W.	S. B.	639.28	1.00	639.28
All of fractional	7	8 N.	10 W.	S. B.	628.84	1.00	628.84
All of	11	8 N.	11 W.	S. B.	640.00	1.00	640.00
All of fractional	19	8 N.	11 W.	S. B.	654.78	1.00	654.78
All of fractional	29	8 N.	11 W.	S. B.	640.00	1.00	640.00
All of fractional	31	8 N.	11 W.	S. B.	654.88	1.00	654.88
All of	25	8 N.	12 W.	S. B.	640.00	1.00	640.00
All of	35	8 N.	12 W.	S. B.	640.00	1.00	640.00

JEROME MADDEN,  
Land Agent.



State of California,  
County of Los Angeles,—ss.

On this 8th day of March, one thousand eight hundred and eighty-six, before me, W. H. Gray, a notary public in and for said Los Angeles County, residing therein, duly commissioned and sworn, personally appeared J. Drew Gray, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of Los Angeles, the day and year first above written.

[Notarial Seal]

W. H. GRAY,  
Notary Public.

State of California,  
City and County of San Francisco,—ss.

On this thirteenth day of January, A. D. one thousand eight hundred and eighty-six, before me, Holland Smith, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Jerome Madden, known to me to be the Land Agent, and J. L. Willcutt, known to me to be the Secretary of the Southern

Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year last above written.

[Notarial Seal]

HOLLAND SMITH,

Notary Public.

807 Montgomery St.

In consideration of the above and foregoing assignment to me, I hereby agree with the said Atlantic & Pacific Fibre Importing & Manufacturing Co. and with the Southern Pacific Railroad Company, that I will do and perform all the stipulations and conditions in the said contract No. 4273, required to be done and performed by the said assignor.

March 18th, 1893.

J. A. GRAVES. [Seal]

San Francisco, Cal., March 28th, 1893.

The Southern Pacific Railroad Company hereby consents to the annexed assignment of the within contract, No. 4723, to J. A. Graves.

SOUTHERN PACIFIC RAILROAD COMPANY,

By JEROME MADDEN,

Its Land Agent.

*In the Circuit Court of the United States, in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY

et al.,

Defendants.

I hereby certify that the foregoing is a full, true, complete and correct copy of the original of Defendants' Exhibit No. 48, introduced before me in said cause and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,

Standing Examiner and Master in Chancery.

[Endorsed]: Unpatented Lands. No. 4723. Contract for a Deed. Southern Pacific R. R. Company to the "Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited." Dated July 23d, 1885. Recorded at Request of Wells, Fargo & Company, April 16, 1886, At 6 min. past 9 A. M. in Book 155, page 374, Records Los Angeles County. Frank A. Gibson, County Recorder. By W. P.

Prichard, Deputy. 4.70 due. U. S. Circuit Court, Southern District California. United States vs. S. P. R. R. Co., 184 Master's and Examiner's Exhibit No. 48. E. H. Lamme, Master and Examiner in Chancery. Filed Feb. 22, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

**Defendants' Exhibit No. 49 in Case No. 184**

RESOLVED, That the Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, a corporation duly organized and existing under the laws of Great Britain, for and in consideration of the sum of fifty thousand dollars (\$50,000.00) to it in hand paid, will convey to Jackson Alpheus Graves, Attorney at Law, resident of Alhambra, in the County of Los Angeles, State of California, and having his office and place of business at Rooms 19, 20 and 21, Baker Block, City of Los Angeles, County of Los Angeles, State of California, all those certain tracts of land situated in the County of Los Angeles and State of California, particularly described as follows, to wit:

Section 7, township 8 north, range 14 west;

Sections 5, 7, 9, 11, 13, 15, 17, 19, 21, 29 and 31, in township 8 north, range 15 west;

Sections 29, 31 and 33 in township 6 north, range 10 west;

Sections 5 and 7 in township 8 north, range 10 west;

Sections 13, 15, 21, 23, 25, 27, 33 and 35 in township 6 north, range 11 west;

Sections 5, 7, 9, 17, 19, 21, 29, 31 and 33 in township 7 north, range 11 west;

Sections 11, 19, 29, and 31, in township 8 north, range 11 west;

Sections 1, 3, 5, 9, 11, 13, 15, 17, 21, 23, 27 and 33 in township 6 north, range 12 west;

Sections 1, 3, 11, 13, 19, 23, 25, 29, 33 and 35 in township 7 north, range 12 west;

Sections 25 and 35 in township 8 north, range 12 west;

Section 25 in township 7 north, range 13 west;

Section 1, in township 5 north, range 12 west;

Sections 1, 3, 5, 9 and 11 in township 5 north, range 11 west; and

Sections 3, 5, 7, 9, 17, 19, 21 and 27 in township 5 north, range 10 west—All in San Bernardino Base and Meridian.

And will also sell, assign, transfer and set over to the said Jackson Alpheus Graves that certain agreement, dated July 23, 1885, between the Southern Pacific Railroad Company, party of the first part, and said Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, a corporation, of London, England, party of the second part, re-

corded in Book 155, page 374, of Deeds, in the office of the Recorder of Los Angeles County, California.

Also that other agreement to convey, executed by the same party to the same party, dated July 23, 1885, recorded in Book 155, page 380, of Deeds, in the office of the Recorder of Los Angeles County, State aforesaid.

Also that other certain agreement, dated July 23, 1885, between the same parties, recorded in Book 158, page 23, of Deeds, in the office of the Recorder of Los Angeles County.

Also that other certain agreement between the same parties, dated July 23, 1885, recorded in Book 159, page 87, of Deeds, in the office of the Recorder of Los Angeles County.

Together with all the rights, of every nature and description of said Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, under said agreements, and each of them. And will authorize the said Graves to enforce said agreements, and each and every of them, for his own use and benefit.

And James Morton Bell, President, and Courtenay Clarke, Secretary of said corporation, are hereby authorized, empowered and directed, for and on behalf of, and as the act of said corporation, to make, execute and deliver to the said Graves a deed, grant, bargain and sale in form, conveying to him all of the

property hereinbefore described, including the said real property, and said agreements to convey.

Office of the Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, Suffolk House, Laurence Pountney Hill, E. C., London, England.

I hereby certify the foregoing to be a true copy of a Resolution duly entered on the 27th day of January, 1893, in the minutes of the Board of Directors of the Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, by virtue of a resolution duly adopted by said Board, at a meeting thereof duly held on said 27th day of January, 1893.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of said corporation, this 27th day of January, 1893.

[Corporate Seal]      **COURTENAY CLARKE,**  
Secretary of the Atlantic & Pacific Fibre Importing  
& Manufacturing Company, Limited.

(The seal of the Company was affixed in the presence of James Morton Bell, President, Courtenay Clarke, Secretary.)

Whereas, the Atlantic & Pacific Fibre Importing and Manufacturing Company, Limited, is a corporation duly formed and existing under the laws of England, and is doing business in the State of California, United States of America, and has its principal place of business, for such business as it transacts in said

United States of America, in the County of Los Angeles, in the State of California; and

Whereas, said corporation, by the foregoing Resolution, did agree to sell and convey to Jackson Alpheus Graves, described in said Resolution, the real property in said Resolution described, and did further agree to sell, assign, transfer and set over the agreement in said Resolution described, to said Graves;

Now, therefore, in consideration of said Resolution, and of the payment to it of the sum of fifty thousand dollars (\$50,000.00), as in said Resolution stated.

This agreement, made this 27th day of January, 1893, between said Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, a corporation duly organized and existing under the laws of Great Britain, party of the first part, and Jackson Alpheus Graves, Attorney at Law, resident of Alhambra, in the County of Los Angeles, State of California, having his office and place of business at Rooms 19, 20 and 21, Baker Block, City of Los Angeles, County of Los Angeles, State of California, party of second part, witnesseth:

That the party of the first part does, by these



presents, grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces or parcels of land, situate, lying and being in the said County of Los Angeles, State of California, particularly described in said Resolution, and does further sell, assign, transfer and set over to said party of the second part those certain contracts and agreements executed by the Southern Pacific Railroad Company, a corporation, to said party of the first part, which said contract and agreements are fully described in said Resolution; and does hereby authorize the said party of the second part to enforce said agreements, and each and every of them for his own use and benefit.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the Atlantic & Pacific Fibre Importing & Manufacturing Company, Limited, has

caused its corporate name and seal, by  
virtue of the Resolution aforesaid, to be  
W. E. V. hereunto affixed, and these presents to be  
N. P. executed by James Morton Bell, its Presi-  
J. M. B. dent, and Courtenay Clarke, its Secretary,  
C. C. this 27th day of January, 1893.

THE ATLANTIC AND PACIFIC FIBRE  
IMPORTING AND MANUFACTUR-  
ING COMPANY, LIMITED,

[Corporate Seal]

By JAMES MORTON BELL,  
President.  
And COURTENAY CLARKE,  
Secretary.

(The seal of the Company was affixed in the  
presence of James Morton Bell, President, Courte-  
nay Clarke, Secretary.)

Kingdom of Great Britain,  
County of Middlesex,—ss.

On this twenty-seventh day of January, 1893, be-  
fore me, William Eustace Venn, Notary Public in  
and for said County of Middlesex, in England, duly  
commissioned and sworn, personally appeared  
James Morton Bell and Courtenay Clarke, known to  
me to be the same President and Secretary, respec-  
tively, of the corporation described in, and who exe-  
cuted the within annexed instrument, and acknowl-

edged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city of London, County of Middlesex, the day and year in this certificate first above written.

Veritas:

[Notarial Seal]

W. F. VENN,

Notary Public in and for the County of Middlesex,  
Kingdom of Great Britain.

(Postage Revenue 27/1/93 One Shilling.)

E. PLURIBUS UNUM.

CONSULATE-GENERAL OF THE UNITED  
STATES OF AMERICA FOR GREAT BRIT-  
AIN AND IRELAND AT LONDON.

I, John C. New, Counsul-general of the United States of America, at London, England, do hereby make known and certify to all whom it may concern, that William Eustace Venn, who hath signed the annexed certificate, is a notary public, duly admitted and sworn, and practicing in the city of London, aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at London aforesaid, this twenty-seventh day of January, in the year

of our Lord one thousand eight hundred and ninety-three.

[U. S. Consulate General Seal]

JNO. C. NEW,  
Consul General.

*In the Circuit Court of the United States, in and for  
the Southern District of California.*

184.

UNITED STATES OF AMERICA,  
Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants.

I hereby certify that the foregoing is a full, true, complete and correct copy of the original of Defendants' Exhibit No. 49 introduced before me in said cause and the original of which was withdrawn by stipulation of the solicitors of the respective parties.

E. H. LAMME,  
Standing Examiner and Master in Chancery.

[Endorsed]: Deed. The Atlantic & Pacific Fibre Fibre Importing & Manufacturing Co. to Jackson Alpheus Graves. Dated January 27th, 1893. Recorded at Request of J. A. Graves, Feb. 15, 1893,

at 40 min. past 3 P. M., in Book 837, page 183 of Deeds, Los Angeles County Records. Arthur Bray, County Recorder. By A. A. Bayley, Deputy. 390-35. 79. D. U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. 184. Master's and Examiner's Exhibit No. 49 for Respondent. E. H. Lamme. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. ———, Deputy.

**Defendants' Exhibit Before the Special Examiner,  
No. 9 in Case No. 184.**

**PATENT No. 1 (BRANCH LINE) SOUTHERN  
PACIFIC RAILROAD COMPANY OF CAL-  
IFORNIA.**

The United States of America, To All to Whom  
These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved July 27th, 1866, and "Joint Resolution," of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas, to the Pacific Coast, and to secure to the Government the use of the same for Postal, Military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State, to construct a railroad and telegraph line, under certain conditions and stipulations expressed in said Act, from the City of San Francisco, to a point of con-

nection with the Atlantic and Pacific Railroad, near the boundary line of said State, and provision is made for granting to the said Company, "every alternate section of public land designated by odd numbers to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed";

And whereas, it is further provided by said Act, that "whenever, prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, or occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers not more than ten miles beyond the limits of said alternate sections, and not included in the reserved numbers";

And whereas, It is further enacted by the 23d Section of the Act of March 3d, 1871, "for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is authorized to construct a line of railroad from a point at or near Tehachapi

Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Company of California," by the aforesaid Act of July 27th, 1866;

And whereas, official statements bearing dates May 11th, 1874, and November 13th, 1875, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President, under the provisions of the Fourth Section of the said Act of July 27th, 1866, have reported to him that the line of said branch railroad and telegraph, from a point in the northwest quarter of section three (3) township two (2) north range fifteen (15) west, San Bernardino Meridian, to a point in the southwest quarter of section four (4), township three (3) south, range one (1) west, at San Gargonio Pass, making one hundred miles of road constructed and fully completed and equipped in the manner prescribed by the said Act of July 27th, 1866.

And whereas, it is further shown, that copies of the report of said Commissioners, have been filed in the Department of the Interior, with copies of the order of the President of the United States, dated May 9, 1874, and November 8, 1875, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the said Act of March 3d, 1871, by Benjamin B. Redding, Land Agent of the said Southern Pacific Railroad Company, as shown by his original list of selections, dated January 20th, 1876, and certified January 28th, 1876, by the Register and Receiver at Los Angeles, California. The said tracts being described as follows, to wit:

North of base line and west of San Bernardino meridian, Los Angeles District.

\* \* \* \* \*

#### TOWNSHIP FOUR, RANGE THIRTEEN.

All of section one, containing six hundred thirty-two acres, and sixty hundredths of an acre. Northwest quarter of southwest quarter, and southwest of southeast quarter of section eleven, containing eighty acres. East half of section thirteen, containing three hundred and twenty acres. South half of northeast quarter of section fifteen, containing eighty acres.

#### TOWNSHIP FIVE, RANGE TWELVE.

Southwest fractional quarter of section thirty-one, containing one hundred and sixty-four acres, and forty-one hundredths of an acre.

#### TOWNSHIP FIVE, RANGE THIRTEEN.

South half of section twenty-five, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres.



\* \* \* \* \*  
North base line and west of San Bernardino Meridian. Indemnity Thirty Miles Limits.

**TOWNSHIP FOUR, RANGE SEVEN.**

South half of section three, containing three hundred and twenty acres. All of section five, containing six hundred and forty-one acres, and ninety-six hundredths of an acre. All of section seven, containing six hundred and eighteen acres and twenty-eight hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. North half of section nineteen, containing three hundred and ten acres and twenty-eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. Northwest quarter of section twenty-seven, containing one hundred and sixty acres.

**TOWNSHIP FOUR, RANGE EIGHT.**

All of section one, containing six hundred and thirty-seven acres, and fifty-six hundredths of an acre. All of section three, containing six hundred and thirty-seven acres and seventy-two hundredths of an acre. All of section five, containing six hundred and forty-six acres, and eighty-eight hundredths

of an acre. Northwest quarter of section seven, containing one hundred and sixty-two acres. Northeast quarter of section nine, containing one hundred and sixty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres.

#### TOWNSHIP FOUR, RANGE NINE.

Northwest quarter of section three, containing one hundred and sixty acres. All of section five, containing six hundred and forty-six acres and forty-six hundredths of an acre. North half of section seven, containing three hundred and twenty-four acres, and forty hundredths of an acre. North half of section nine, containing three hundred and twenty acres.

#### TOWNSHIP FOUR, RANGE TEN.

North half of southwest quarter, and north half of section one, containing four hundred and one acres, and eighty hundredths of an acre. Northeast quarter of section three, containing one hundred and sixty-three acres and thirty-six hundredths of an acre. West half of section eleven, containing three hundred and twenty acres.

#### TOWNSHIP FIVE, RANGE NINE.

All of section twenty-five, containing six hundred and forty acres. South half of section twenty-seven, containing three hundred and twenty acres. South half of section twenty-nine, containing three hundred

and twenty acres. North half of southwest quarter, north half of southeast quarter and north half of section thirty-one, containing four hundred and seventy-five acres, and sixty-eight hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

#### TOWNSHIP FIVE, RANGE TEN.

Southwest quarter of section seventeen, containing one hundred and sixty acres. All of section nineteen, containing six hundred and seventeen acres, and eighty-four hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. South half of section twenty-three containing three hundred and twenty acres. South half of section twenty-five, containing three hundred and twenty acres. All of section twenty-seven, containing six hundred and forty acres. Northeast quarter of section twenty-nine, containing one hundred and sixty acres. Northeast quarter of section thirty-three, containing one hundred and sixty acres. All of section thirty-five containing six hundred and forty acres.

#### TOWNSHIP FIVE, RANGE ELEVEN.

Southwest quarter of section three, containing one hundred and sixty acres. All of section five, containing six hundred and seventy-nine acres, and

forty hundredths of an acre. All of section seven, containing six hundred and fourteen acres, and eighty-eight hundredths of an acre. All of section nine, containing six hundred and forty acres. West half of section eleven, containing three hundred and twenty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. Northwest quarter of section nineteen, containing one hundred and forty-nine acres, and seventy-two hundredths of an acre. Northeast quarter of section twenty-one, containing one hundred and sixty acres.

#### TOWNSHIP FIVE, RANGE TWELVE.

All of section one, containing eight hundred and forty-one acres and fifty-four hundredths of an acre. All of section three containing eight hundred and fifty acres and twenty-eight hundredths of an acre. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. Southeast quarter of section fifteen, containing one hundred and sixty acres. East half and southwest quarter of section nineteen, containing four hundred and eighty-one acres and ninety-two hundredths of an acre. Northwest quarter of section of twenty-three, containing one hundred and sixty acres. All of section twenty-seven, containing six hundred and forty acres. All

of section twenty-nine, containing six hundred and forty acres. Northwest quarter and east half of section thirty-one, containing four hundred and eighty-three acres, and twenty-five hundredths of an acre. All of section thirty-three, containing six hundred and forty acres.

#### TOWNSHIP FIVE, RANGE THIRTEEN.

North half of section twenty-five, containing three hundred and twenty acres.

#### TOWNSHIP SIX, RANGE ELEVEN.

West half of section nineteen, containing three hundred and twenty-five acres. West half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and forty-one acres, and eight hundredths of an acre. West half of section thirty-three, containing three hundred and twenty acres.

#### TOWNSHIP SIX, RANGE TWELVE.

All of section twenty-five, containing six hundred and forty acres. South half of northwest quarter, southwest quarter, and east half of section thirty-five, containing five hundred and sixty acres.

The said tracts as described in the foregoing pages from one to eight inclusive, containing the aggregate area of forty-one thousand one hundred and seventy-eight acres, and twenty-three hundredths of an acre (41,178.23/100).

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the said Acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company, of California, and to its successors and assigns, the tracts of land above described, mineral land excepted,

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

By the President,

[Seal]

U. S. GRANT.

By D. D. CONE,

Secretary.

C. W. HOLCOMBE,

Recorder of the General Land Office.

Recorded in vol. 5, pages 409 and 417 in.

[Endorsed]: Recorded at request of Jerome Madden, Land Agent of the Southern Pacific Company, December 13th, 1880, at 20 min. past 11 A. M., in Book 2, of Patents, on page 563 et seq., in the recorder's office of Los Angeles County, Cal.

CHAS. C. LAMB,  
County Recorder.

By C. H. Dunsmoor,  
Deputy.

Fees: \$8.70.

[Endorsed]: Recorded at request of Wells, Fargo & Co., March 25th, 1881, at 45 min. past 10 o'clock A. M., in Book A of Patents, on page 444 et seq., Records of San Bernardino County, Cal.

A. F. McKENNEY,  
Co. Recorder.

By S. M. Wall,  
Deputy.

Fees: 8.75.

(Stamped:) Received Apr. 14, 1876. Answered

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(Written in red ink upon the title page:) Meh. 13, 1878. Exd. with List & Tract Book. Areas of Lands Patented herein—41 178.23 acres (Correct).

Marked "Defendants' Exhibit before the Special Examiner No. 9. Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office

of the Southern Pacific Railway Company, and find it to be a full, true and correct copy thereof, so far as it involves the lands in suit, and omitting the description of lands that are not in issue.

STEPHEN POTTER,  
Special Examiner.

San Francisco, October 13th, 1893.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk,  
———, Deputy.

(On margin of page:) United States vs. S. P. R.  
R. Co. et al. No. 184.

**Defendants' Exhibit Before the Special Examiner  
No. 10 in Case No. 184.**

**PATENT NO. 2 OF THE BRANCH LINE OF  
THE SOUTHERN PACIFIC RAILROAD  
COMPANY.**

The United States of America, to All to Whom these  
Presents Shall Come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and "Joint Resolution" of June 28th, 1870, "to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to secure to the Government the use of the same for postal, military and other purposes," authority is given to the Southern Pacific Railroad Company of California, a corporation ex-



isting under the laws of the state, to construct a railroad and telegraph line under certain conditions and stipulations expressed in the said act from the city of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of the said state, and provision is made for granting to the said company, "every alternate section of public land designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad on the line thereof, and within the limits of twenty miles on each side of said road not sold, reserved, or other wise disposed of by the United States and to which pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas, it is further enacted by the 23d section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California" is authorized "to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the aforesaid act of July 27, 1866."

And whereas, official statements bearing dates May

11, 1874, November 13, 1875, July 26, 1876, March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that commissioners appointed by the President under the provisions of the fourth section of the said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph, from the town of Mojave, in township eleven north of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma Reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two, east, same base and meridian, making three hundred and forty-six miles and ninety-six hundredths of a mile of road constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866;

And whereas, it is further shown that copies of the reports of said commissioners have been filed in the Department of the Interior with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, on the completion of the above portion of said railroad and telegraph line;

And whereas, certain tracts have been selected under the said act of March 3, 1871, by Jerome Madden, Land Agent of the said Southern Pacific Railroad Company, as shown by his original list of selections, dated June 27, 1877, and certified July 2, 1877, by

the Register and Receiver at Los Angeles, California. The said tracts being described as follows, to wit:

North of base line and west of the San Bernardino meridian, California.

\* \* \* \* \*

### TOWNSHIP TWO, RANGE THIRTEEN.

All of section seventeen, containing six hundred and thirty-nine acres and ninety-eight one hundredths of an acre. All of section twenty-one, containing three hundred and sixty-seven acres and sixty-eight one-hundredths of an acre. All of section twenty-five, containing six hundred and forty acres. The east half of the northeast quarter and the lots numbered one, two, and three of section twenty-seven, containing one hundred and fifty-six acres and thirty-two one-hundredths of an acre. The north half of the northeast quarter and the lots numbered one, two, three and four of section thirty-five, containing one hundred and eighty-one acres and fifty-one one-hundredths of an acre.

### TOWNSHIP TWO, RANGE FOURTEEN.

The lots numbered one, two three and four, the south half of the southeast quarter, and the south half of the southwest quarter of section twenty-one, containing two hundred and sixty-one acres and sixty-eight one-hundredths of an acre. The lots numbered

one and two, and the northwest quarter of the southwest quarter of section twenty-seven, containing one hundred and nineteen acres and ninety-four one-hundredths of an acre. The east half of the northeast quarter and the lots numbered one, two, three and four of section twenty-nine, containing one hundred and sixty-six acres and forty-eight one-hundredths of an acre. All of section thirty-three, containing six hundred and forty acres.

#### TOWNSHIP TWO, RANGE FIFTEEN.

The lots numbered one, two, three, four, five and six, of section one, containing two hundred and thirty acres and nine one-hundredths of an acre.

\* \* \* \* \*

The said tracts of land as described in the foregoing pages, from 2 to 14, inclusive, make in the aggregate the area of (54,315.42) fifty-four thousand three hundred and fifteen acres and forty-two one-hundredths of an acre.

—Now know ye that the United States of America, in consideration of the premises and pursuant to the said acts of Congress have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land above described, “mineral land” excepted.

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever thereunto belonging, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourth day of April, in the year of our Lord one thousand eight hundred and seventy-nine and of the Independence of the United States the one hundred and third.

[Seal]

By the President:

R. B. HAYES.

By WM. H. CROOK,  
Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 7, pages 86 to 97, inclusive.

[Endorsed]: Recorded at Request of C. Cabot, Feby. 12, 1881, at 45 mins. past 3 P. M. in Book 2 of Patents, page 574, records Los Angeles County.

CHAS. C. LAMB,  
County Recorder.

By A. N. Hamilton,  
Dept.

\$12.70 Paid.

[Endorsed]: Record at Request of C. Cabot, Feby. 18th, 1881, at 50 Min. past 10 o'clock A. M. in Book A of Patents, page 412, et seq., Records San Bernardino County, State of California.

A. F. McKENNEY,  
Co. Recorder,  
By S. M. Wall,  
Deputy.

Fees \$12.75.

[Endorsed]: Record at the Request of C. Cabot. February 13th, 1881, at 45 min. past 9 o'clock A. M. in Book 2 of Patents, page 151 Records of San Diego County.

GILBERT DENNIS,  
County Recorder.

Fees \$12.75.

(Stamped.) Received Apr. 17, 1879. Answered

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Marked "Defendants' Exhibit before the Special Examiner No. 1 Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true and correct copy thereof, so far

as it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 13th, 1893.

(On margin of page): United States vs. S. P. R.  
R. Co. et al. No. 184.

Filed Dec. 5, 1893, Wm. M. Van Dyke, Clerk.

— Deputy.

**Defendants' Exhibit Before the Special Examiner  
No. 14 in Case No. 184.**

PATENT NO. 6 OF LANDS GRANTED IN  
CALIFORNIA TO THE SOUTHERN PACI-  
FIC RAILROAD COMPANY, ACT MARCH  
3, 1871,

The United States of America, to all to Whom these  
Presents Shall Come, Greeting:

Whereas, by the act of Congress approved July 27, 1866, and joint resolution of June 28, 1870, "to aid in the construction of a Railroad and Telegraph Line from the State of Missouri and Arkansas to the Pacific Coast," and to secure to the Government the use of the same for Postal, Military, and other purposes, authority is given to the Southern Pacific Railroad Company of California, a corporation existing under the laws of the State to construct a railroad and telegraph line, under certain conditions

and stipulations expressed in said act from the city of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for granting to the said company, "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office";

And whereas, it is further enacted by the 23d section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as



were granted to said Southern Pacific Railroad Company of California," by the aforesaid act of July 27, 1866.

And whereas, official statements bearing dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the Commissioners appointed by the President under the provisions of the 4th section of the said act of July 27, 1866, have reported to him that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east same base and meridian, making three hundred and forty-six miles and ninety-six one-hundredths of a mile of road has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas, it is further shown that copies of the report of said commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878 of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the act aforesaid, by Jerome Madden, the duly authorized Land Agent of the Southern Pacific Railroad Company, as shown by his original lists of selections dated July 12, 1882, and May 14, 1883, and certified July 14, 1882, March 9, and May 25, 1883, by the Register and Receiver at Los Angeles District, California. The said tracts of land lie coterminus to the constructed line of road and are particularly described as follows, to wit:

North of base line and west of San Bernardino principal meridian, California.

\* \* \* \* \*

#### TOWNSHIP TWO, RANGE TWELVE.

The lots numbered one, two, the east half of the southwest quarter, and the southeast quarter of section thirty-one, containing three hundred and twenty-one acres.

#### TOWNSHIP THREE, RANGE FIFTEEN.

All of section twenty-one, containing five hundred and ninety-eight acres and seventy-six one-hundredths of an acre.

\* \* \* \* \*

North of base line and west of San Bernardino principal meridian, California.

\* \* \* \* \*

**TOWNSHIP FOUR, RANGE EIGHTEEN.**

The northeast quarter, the lot numbered three, and the southeast quarter of the northwest quarter of section nineteen, containing two hundred and thirty-nine acres and seventy-seven one-hundredths of an acre. The northeast quarter of the northeast quarter, the south half of the northeast quarter, the lot numbered one, and the fractional south half of section thirty-one, containing four hundred and eighty acres and eleven one-hundredths of an acre.

\* \* \* \* \*

The said tracts of land as described in the foregoing make the aggregate area of (37,069.97) thirty-seven thousand sixty-nine acres and ninety-seven one-hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant, unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include coal and iron lands."

To have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto the said Southern Pacific Railroad Company of California and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

By the President

CHESTER A. ARTHUR.

[Seal]

WM. H. CROOK,

Secretary.

S. W. CLARK,

Recorder of the General Land Office.

[Endorsed]: \$10. Recorded at the Request of Wells, Fargo & Co. March 11th, A. D. 1884, at 45 min. past 2 P. M. in Book 1 of Patents, page 257, et seq., Records of Ventura Co., Cal.

JOHN T. STOW,

Recorder.

By I. H. Warring,

Deputy

[Endorsed]: Received for Record March 4, 1884. at 12 o'clock M. at Request of Wells, Fargo & Co., and Recorded in Book No. 3 of Patents, Records San Diego Co., page 115, et seq., Mch. 6, 1884, at ten o'clock and 15 min. A. M.

E. G. HAIGHT,

County Recorder.

By H. T. Christian,

Deputy.

\$9.75.

[Endorsed]: Recorded at the Request of Wells, Fargo & Co., Feby. 13th, A. D. 1884, at 8:45 A. M. Book "B" of Land Patents, pages 322, et seq.

W. F. HOLCOMB,

County Recorder, San Bernardino Co.

By E. A. Nisbet,

Deputy.

\$8.35.

[Endorsed]: #39. Recorded at request of Wells, Fargo & Co. Apr. 7th, 1890, at 45 min. past 3 P. M., in Book "C" of Patents, page 446, et seq., records San Bernardino County.

A. S. DAVIDSON,

County Recorder.

(Error.) No fee. Re-recorded to correct error in former record.

[Endorsed]: Recorded at Request of C. Cabot, Feby. 9, 1884, at 5 min. past 4 P. M. in Book 3 of Patents, page 328, et seq. Records Los Angeles County.

CHAS. E. MILES,  
County Recorder.  
By W. B. Prichard,  
Deputy.

9.30 Pd.

[Endorsed]: Filed April 25, 1888.

CHAS. H. DUNSMOOR,  
Clerk.

By A. N. Hamilton,  
Deputy.

(Stamped:) Land Dep't S. P. R. R. Received  
Jan. 22, 1884. Answered ———, 188—. Book  
———, page ———.

Marked "Defendants' Exhibit Before the Special Examiner No. 14, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true and correct copy thereof, so far as

it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,

Special Examiner.

San Francisco, October 13th, 1893.

(On margin of page:) United States vs. S. P. R.  
R. Co. et al. No. 184. Filed Dec. 5, 1893. Wm. M.  
Van Dyke, Clerk. ———, Deputy.

**Defendants' Exhibit Before the Special Examiner  
No. 18 in Case No. 184.**

Patent No. 9, of Lands Granted by the Act of March  
3, 1871, to the Southern Pacific Railroad Com-  
pany, Los Angeles District, California.

The United States of America, to All to Whom  
These Presents Shall Come, Greeting:

Whereas, by the Act of Congress, approved July  
27, 1866, and joint resolution of June 28, 1870, "to  
aid in the construction of a Railroad and Telegraph  
line from the States of Missouri and Arkansas to  
the Pacific Coast," and to secure to the Government  
the use of the same for Postal, Military and other  
purposes, authority is given to the Southern Pacific  
Railroad Company of California, a corporation ex-  
isting under the laws of the State to construct a Rail-  
road and Telegraph Line, under certain conditions  
and stipulations expressed in said Act from the

City of San Francisco to a point of connection with the Atlantic and Pacific Railroad near the boundary line of said State, and provision is made for the granting to the said Company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved sold, granted or otherwise appropriated, and free from pre-emption or other claims, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the General Land Office.

And whereas, it is further enacted by the 23d section of the act of March 3, 1871, "for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subjects to the same limitations, restrictions and conditions as were



granted to said Southern Pacific Railroad Company of California," by the aforesaid act of July 27th, 1866.

And whereas, official statements dates May 11, 1874, November 13, 1875, July 22, 1876, March 3, 1877, and January 30, 1878, from the Secretary of the Interior, have been filed in the General Land Office, showing that the commissioners appointed by the president under the provisions of the fourth section of the said act of July 27, 1866, have reported to him, that the line of said branch railroad and telegraph from the town of Mojave, in township eleven north, of range twelve west, San Bernardino base and meridian, and thence to the Fort Yuma reservation, in the southeast quarter of section twenty-six, township sixteen south, range twenty-two east same base and meridian, making three hundred and forty-six miles and ninety-six one hundredths of a mile of road has been constructed and fully completed and equipped in the manner prescribed by the said act of July 27, 1866.

And whereas, it is further shown that copies of the report of said commissioners have been filed in the Department of the Interior, with copies of the orders of the President of the United States, dated May 9, 1874, November 8, 1875, July 2, 1876, March 2, 1877, and January 23, 1878, of the completion of the above portion of said railroad and telegraph line.

And whereas, certain tracts have been selected under the act aforesaid by Jerome Madden, the duly authorized land agent of the Southern Pacific Railroad Company, as shown by his original lists of selections, dated June 27, 1877, May 14, 1883, April 7, May 17, and June 27, 1884, and certified July 2, 1877, May 25, 1883 and April 16, May 23, and July 19, 1884, by the register and receiver at Los Angeles, California. The said tracts of land lie coterminus to the constructed line of road and particularly described as follows, to wit:

\* \* \* \* \*

North of base line and west of San Bernardino principal meridian, California.

\* \* \* \* \*

#### TOWNSHIP SIX, RANGE TWELVE.

The southwest quarter, and the south half of the southeast quarter of section twenty-nine, containing two hundred and forty acres. All of section thirty-one, containing six hundred and forty acres.

#### TOWNSHIP SIX, RANGE THIRTEEN.

All of section one, containing six hundred and forty acres. All of section three, containing six hundred and forty acres. All of section seven, containing six hundred and forty acres and eighty-one hundredths of an acre. All of section eleven, con-

taining six hundred and forty acres. The south half of section fifteen, containing three hundred and twenty acres. The northwest quarter, the west half of the southwest quarter, and the east half of the southeast quarter of section seventeen, containing three hundred and twenty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres.

#### TOWNSHIP SIX, RANGE FOURTEEN.

All of section one, containing six hundred and forty acres. The northeast quarter of section eleven, containing one hundred and sixty acres. The north half of section thirteen, containing three hundred and twenty acres.

#### TOWNSHIP SEVEN, RANGE TWELVE.

All of section fifteen, containing six hundred and forty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-seven containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty-two acres and forty one hundredths of an acre.

#### TOWNSHIP SEVEN, RANGE THIRTEEN.

All of section seven, containing six hundred and thirty-six acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. All

of section nineteen, containing six hundred and thirty-six acres and six one hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and thirty-nine acres. All of section thirty-one, containing six hundred and thirty-nine acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

#### TOWNSHIP SEVEN, RANGE FOURTEEN.

The northwest quarter, the lot numbered one of the southwest quarter, the north half of the lot numbered two of the southwest quarter, and the east half of section seven, containing six hundred acres. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. The south half of the southwest quarter, the

northeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section thirty-three, containing one hundred and sixty acres.

TOWNSHIP SEVEN, RANGE FIFTEEN.

\* \* \* \* \*

The north half of section thirteen, containing three hundred and twenty acres.

\* \* \* \* \*

The said tracts of land as described in the foregoing make the aggregate area of (33,246.21) thirty-three thousand two hundred and forty-six acres, and twenty-one one hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant unto the said Southern Pacific Railroad Company of California, and to its successors and assigns, the tracts of land selected as aforesaid and described in the foregoing. Yet excluding and excepting, "All Mineral Lands," should any such be found in the tracts aforesaid, but this exclusion and exception according to the terms of the statute "shall not be construed to include Coal and Iron Lands."

To have and to hold the same together with all rights, privileges, immunities and appurtenances of

whatever nature thereunto belonging unto the said Southern Pacific Railroad Company of California, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this ninth day of January in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

By the President,

CHESTER A. ARTHUR.

[Seal]

M. McKEAN,

Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded in Vol. 8, pages 413 to 419, inclusive.

[Endorsed]: Recorded at Request of C. Cabot, Jany. 30th, 1885, at 10 min. past 3 P. M. in Book 3 of Patents, Page 489, Records Los Angeles County.

CHAS. E. MILES,

County Recorder,

By \_\_\_\_\_.

[Endorsed]: Recorded at Request of Wells, Fargo & Co. February 5th, A. D. 1885, at 35 min. Past 10

A. M. Book B of Patents, Pages 388 to 396, Inclusive.

LEGARE ALLEN,

County Recorder, San Bernardino.

[Endorsed]: Received for Record Feby. 9th, 1885, at 30 min. past 9 o'clock A. M. at Request of Wells, Fargo & Co., and Recorded in Book No. 3 of Patents, Page 234, et seq., Feb. 26th, 1885, at 3 o'clock and — min. P. M.

S. A. McDOWELL,

County Recorder, San Diego County.

By \_\_\_\_\_,

Deputy.

\$6.75.

(Stamped:) Land Dep't S. P. R. R. Received Jan. 23, 1885. Answered ——— 188 ——. Book ———, page ———.

Marked "Defendants' Exhibit before the Special Examiner No. 18, Stephen Potter, Special Examiner."

I hereby certify that I have compared the foregoing document with the original on file in the office of the Southern Pacific Railroad Company, and find it to be a full, true and correct copy thereof so far

as it involves the lands in suit, and omitting the descriptions of lands that are not in issue.

STEPHEN POTTER,  
Special Examiner.

San Francisco, October 13th, 1893.

(On margin of page:) United States vs. S. P. R.  
R. Co et al. No. 184. Filed Dec. 5, 1893. Wm. M.  
Van Dyke, Clerk. ————, Deputy.

*In the Circuit Court of the United States, Ninth Cir-  
cuit, Southern District of California.*

No. 184.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY,  
et al.,  
Defendants.

**Testimony of J. A. Graves in Case No. 184.**

Testimony taken on behalf of the defendants be-  
fore the Standing Master and Examiner in Chancery,  
Hon. E. H. Lamme, at his office, in the city and  
county of Los Angeles, State of California, pursuant  
to a notice to take the same, served upon the Hon.  
George J. Denis, United States Attorney, and Joseph  
H. Call, Esq., Special United States Attorney.



Appearances and present: Joseph H. Call, Esq., Special United States Attorney, Solicitor for Complainant; Joseph D. Redding, Esq., Solicitor for Defendants; Hon. E. H. Lamme, Esq., Standing Master and Examiner in Chancery and Leo Longley, Reporter to said Examiner.

\* \* \* \* \*

J. A. GRAVES, called for the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. Redding.)

Q. 1. What is your name, please?

A. J. A. Graves.

Q. 2. Where do you reside?

A. Los Angeles County. I live at Alhambra, in this county.

Q. 3. Are you a resident and citizen of the Southern District of California?

A. Yes, sir; have been since 1875.

Q. 4. Are you a citizen of the United States?

A. Yes, sir.

Q. 5. Where were you born?

A. In the State of Iowa.

Q. 6. United States of America?

A. Yes, sir.

Q. 7. Are you one of the defendants in this action?

(Testimony of J. A. Graves.)

A. Yes, sir; by substitution.

Q. 8. You are one of the defendants?

A. Yes, sir.

Q. 9. Do you hold any deeds of purchase of lands involved in this suit from other purchasers from the Southern Pacific Railroad Company?

A. This is Case 184?

Q. 10. Yes.

Mr. CALL.—The question is objected to as incompetent, immaterial and irrelevant, and not the best evidence; and upon the further ground that by the terms and conditions of the Act of Congress of March 3, 1871, and the Act of July 27, 1866, the lands involved in this suit were excepted out of the grant to the Southern Pacific Railroad Company; and upon the further ground that by the terms and conditions of those Acts of Congress the grant to the Southern Pacific Railroad Company was not to take effect until a map of definite location was filed by said company; and upon the further ground that the lands in suit in this case have been forfeited and surrendered to the United States by the Act of said Southern Pacific Railroad Company, and by Act of Congress; and upon the further ground that the lands in suit in this case were granted to the Atlantic & Pacific Railroad Company by Act of Congress of July 27, 1866, and

(Testimony of J. A. Graves.)

that said company filed in the Interior Department a map of definite location of its line of route, which map of definite location has been accepted by the Secretary of the Interior of the United States as a good and sufficient map of definite location; and upon the further ground that the lands in suit herein were withdrawn and reserved by authority of the United States before any grant to the Southern Pacific Railroad Company took effect; and upon the further ground that the issues in this case have been finally decided by the Supreme Court of the United States and by the United States Circuit Court for the Southern District of California, as shown by the records and decisions of those cases in evidence herein.

A. Yes, sir. Do you want to offer these in evidence?

Mr. REDDING.—Yes, sir. Just introduce them.

Mr. GRAVES.—I offer in evidence deed from the Southern Pacific Railroad Company to the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, for five thousand and some acres of patented lands, patented prior to the issuance of the deed described as follows, said deed being numbered 4719:

“The southwest quarter (SW.  $\frac{1}{4}$ ) of section seventeen (17). All of fractional section nineteen (19).

(Testimony of J. A. Graves.)

All of section twenty-one (21). All of section twenty-seven (27) in township five (5) north of range ten (10) west; the southwest quarter (SW.  $\frac{1}{4}$ ) of section three (3). All of fractional section five (5). All of section nine (9). West half (W.  $\frac{1}{2}$ ) of section eleven (11) in township five (5) north of range eleven (11) west. All of fractional section one (1) in township five (5) north of range twelve (12) west, and west half (W.  $\frac{1}{2}$ ) of section No. thirty-three (33) in township six (6) north of range eleven (11) west, all in San Bernardino base and meridian, containing five thousand and eighteen (5018.78) .78 acres, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; reserving all claim of the United States to the same as mineral land."

Mr. CALL.—Same objections.

(Document last offered marked Defendants' Exhibit No. 44, before E. H. Lamme, Examiner.)

Mr. REDDING.—Mr. Call, in reference to the introduction of these deeds and contracts, are you willing that certified copies of the same may be introduced in lieu of the originals?

Mr. CALL.—Yes, I have no objections, upon the Examiner comparing them and certifying to their be-

(Testimony of J. A. Graves.)

ing copies; the copies may be introduced in lieu of the originals; subject to the same objections.

Mr. REDDING.—Then I understand you are now introducing the originals by showing them?

Mr. GRAVES.—Yes, sir.

Mr. REDDING.—And then leaving the certified copies, to be certified with the Examiner?

Mr. GRAVES.—Yes, sir.

Mr. REDDING.—Proceed with the enumeration and introduction of the exhibits.

Mr. GRAVES.—Also Contract No. 4720, for the following described lands:

“All of fractional sections three (3), five (5), and seven (7). All of section nine (9), north half (N.  $\frac{1}{2}$ ), and southeast quarter (S.E. $\frac{1}{4}$ ) of section seventeen (17) in township five (5) north of range ten (10) west. All of fractional section one (Frac'l 1), fractional north half (Frac'l N.  $\frac{1}{2}$ ), southeast quarter (S.E. $\frac{1}{4}$ ) of section three (3), east half (E.  $\frac{1}{2}$ ) of section eleven (11) in township five (5), north of range eleven (11) west. All of sec. twenty-nine (29). All of fractional section thirty-one (frac'l 31), and all of section thirty-three (33) in township six (6), north of range ten (10) west. All of sections thirteen (13), fifteen (15), twenty-one (21), twenty-

(Testimony of J. A. Graves.)

three (23), twenty-five (25), twenty-seven (27), east half ( $E\frac{1}{2}$ ) of thirty-three (33), and all of thirty-five (35), in township six (6), north of range eleven (11) west, all of San Bernardino Base and Meridian, containing eleven thousand two hundred and fifty-eight  $\frac{36}{100}$  ( $11,258.\frac{36}{100}$ )  $\frac{36}{100}$  acres."

Mr. CALL.—Same objections.

(Document last offered marked Defendants' Exhibit No. 45, before E. H. Lamme, Examiner.)

Mr. GRAVES.—Also Contract No. 4721, for the following described lands:

"All of fractional sections one (1), three (3), and five (5), all of sections nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17), twenty-one (21), twenty-three (23), twenty-seven (27), and thirty-three (33), in township six (6), north of range twelve (12) west, all of San Bernardino Base and Meridian, containing seventy-six hundred and sixty-eight ( $7668.\frac{27}{100}$ )  $\frac{27}{100}$  acres."

Mr. CALL.—Same objections.

(Document last offered marked Defendants' Exhibit No. 46, before E. H. Lamme, Examiner.)

Mr. GRAVES.—Also Contract No. 4,722, for the following described lands:

"All of fractional section seven ( $\frac{7}{16}$ ) in township eight (8), north of range fourteen (14) west.

(Testimony of J. A. Graves.)

All of section five (5). All of fractional section seven ( $\frac{1}{2}$  7). All of sections nine (9), eleven (11), thirteen (13), fifteen (15), seventeen (17). All of fractional nineteen ( $\frac{1}{2}$  19). All of twenty-one (21), twenty-nine (29), and all of fractional thirty-one ( $\frac{1}{2}$  31) in township eight (8), north of range fifteen (15) west. All of fractional section thirty-one ( $\frac{1}{2}$  31) in township nine (9) north of range fifteen (15) west; all of San Bernardino Base and Meridian, containing eighty-two hundred and seventy-three ( $8,273.34/100$ )  $34/100$  acres.

Mr. CALL.—Same objections.

(Documents last offered marked "Defendants' Exhibit No. 47, before E. H. Lamme, Examiner.)

Mr. GRAVES.—Also Contract No. 4,723, for the following described lands:

"All of fractional sections five (5) and seven (7). All of sections nine (9) and seventeen (17), fractional section nineteen (19). All of sections twenty-one (21), and twenty-nine (29), fractional section thirty-one (31). All of section thirty-three (33), in township seven (7) north, range eleven (11) west. All of fractional sections one (1) and three (3), southwest quarter of northeast quarter (S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ), west half of southeast quarter (W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$ ) and west half (W.  $\frac{1}{2}$ ) of section eleven (11).

(Testimony of J. A. Graves.)

All of section thirteen (13), fractional section nineteen (19). All of sections twenty-three (23), twenty-five (25), twenty-nine (29), thirty-three (33), and thirty-five (35), in township seven (7) north, range twelve (12) west. All of section twenty-five (25) in township seven (7) north, range thirteen (13) west. All of fractional sections five (5) and seven (7) in township eight (8) north, range ten (10) west. All of section eleven (11), fractional section nineteen (19). All of section twenty-nine (29), fractional section thirty-one (31), in township eight (8) north, range eleven (11) west. All of sections twenty-five (25), and thirty-five (35), in township eight (8) north, range twelve (12) west; all of San Bernardino Base and Meridian, containing seventeen thousand seven hundred and sixty-eight ( $17,768.41/100$ )  $41/100$  acres."

Mr. CALL.—Same objections.

(Document last offered marked Defendants' Exhibit No. 48, before E. H. Lamme, Examiner.)

Mr. GRAVES.—All of those contracts being from the Southern Pacific Railroad Company to the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited. Then I also offer a deed from the Atlantic and Pacific Fibre Importing and Manufacturing Company, to myself, covering all of the



(Testimony of J. A. Graves.)

land described in the former exhibits, which you will see is also—it is an assignment of all of these contracts, besides being a deed of the lands.

(Document last offered marked Defendants' Exhibit No. 49, before E. H. Lamme, Examiner.)

Q. 11. (By Mr. REDDING.) Did you purchase those lands in good faith? A. Yes, sir.

Q. 12. For value received? A. Yes, sir.

Q. 13. As stated in the deed? A. Yes, sir.

Q. 14. Are you at present holding said lands under the said deeds? A. Yes.

Q. 15. Are you in possession of the same?

A. Well, we are exercising possession; we are keeping other people off of them. Not farming them, but—yes, we are in possession.

Q. 16. Have you paid all the State, county and municipal taxes and assessments legally levied and assessed upon said lands since the said deed?

A. Well, I have paid some, and there are others that were assessed this year that were canceled by the order of the District Attorney, holding that they were non-assessable lands. I was ready to pay them provided they were held to be legal.

Q. 17. Then you have paid—

A. All legally assessed taxes, yes, sir.

Q. 18. And assessments? A. Yes, sir.

(Testimony of J. A. Graves.)

Q. 19. Did you buy these lands in good faith?

A. Yes, expecting to make title to them.

Q. 20. And do you hold them as said purchaser, and as a citizen of the United States?      A. I do.

Q. 21. And as an innocent purchaser?

A. Well—

Q. 22. For value received?

A. I hold them for a valuable consideration.

Q. 23. Well, do you claim to be an innocent purchaser of said lands, under the Act of Congress of March 3, 1887?

A. I think I am protected under the Act of Congress of 1887. I would like to understand this "innocent"—what you mean by that. Of course, I have notice of the defect—I have notice of the Congressional action taken, and of the pendency of this suit; had it when I bought. Outside of that I consider myself an innocent purchaser. Of course, I had that notice of that suit. There is no use denying that. At the same time, I understand—I think I understand, the Act of Congress of 1887, and I think I am protected under it.

Mr. REDDING.—That is all.

(Testimony of J. A. Graves.)

Cross-examination.

(By Mr. CALL.)

Q. 24. How much did you pay the Atlantic and Pacific Fibre Importing and Manufacturing Company for these lands?

A. I have not paid them anything in coin. But I have agreements with them which are the equivalent of coin.

Q. 25. What is the nature of the agreements?

A. I am to protect them in the title, that is, protect them in their original purchase money; make what I can out of it over and above that.

Q. 26. And devote your legal services to that end?

A. Yes. They have to have somebody on this end.

Mr. CALL.—That is all.

Adjourned until December 20th, 1893, at 10 o'clock A. M., to meet by consent of counsel at the Main Street Bank and Trust Company's office, in the City of Los Angeles.

Case No. 184.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

The Southern Pacific Railroad Company and D. O. Mills, and Garrit L. Lansing, Trustees; the City Brick Company; Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter

Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Duns-  
moor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Fergus-  
son, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamiton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoff-  
man, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Jahannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Ken-  
worthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton,

John Robarts and George L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, deceased, George Loomis, George Loomis, Marion L. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert,

Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathern, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood, and Jackson A. Graves,

Defendants.

**Decree in Equity Filed July 19, 1984, in Case No. 184.**

This cause having been regularly set for to-day was on this 25th day of June, 1894, duly heard, in open Court.

The plaintiff appeared by Mr. George J. Denis, United States Attorney, and Mr. Joseph H. Call Special Attorney. The defendants appeared by Mr. William F. Herrin, Mr. L. E. Payson and Mr. Joseph D. Redding, their solicitors. Mr. D. L. Russell and

Mr. Horace Bell also appeared, as solicitors for the Executors of the Estate of Miguel Leonis, deceased, Defendants.

The testimony having been taken, and all the evidence introduced, and the cause having been duly argued and submitted, it is by the Court now—

Ordered, adjudged and decreed, that the United States of America is the owner, by title in fee simple absolute, of all the sections of land designated by odd numbers, in township three (3) and four (4) north, ranges five (5), six (6), and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19) west. Also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number two (2), north, to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, (except sections twenty-three (23) and thirty-five (35) in township four (4) north, range fifteen (15) west, and except sections one (1), eleven (11), and thirteen (13) in townships three (3) north, range fifteen (15) west); also the unsurveyed lands within said area which will be designated as



odd-numbered sections when the public surveys of the United States shall have been extended over such townships. All the lands are herein described as of San Bernardino Base and Meridian, and are situated in the State of California.

And the defendants are, and each of them is, forever enjoined and restrained from chopping upon or carrying from the said lands any trees, timber or wood, and from claiming or asserting any right, title or interest in or to the said lands or any thereof.

It is further ordered, adjudged and decreed, that each and every patent heretofore issued by the United States to the Southern Pacific Railroad Company in pursuance of the act of Congress approved July 27, 1866 (14 Stats. 292), and the act entitled "An act to incorporate the Texas & Pacific Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, (16 Stats. 573), and either of said acts, and all acts amendatory and supplemental to either thereof, purporting to convey any of the lands hereinbefore described, to said Southern Pacific Railroad Company, is null, void and vacated.

It is further ordered, adjudged, and decreed that each and every patent which has heretofore issued by the United States to the defendants or to any of them, in pursuance of the pre-emption, homestead, or any other general land law of Congress, is excepted from.

and in no wise affected by the provisions of this decree; nor shall this decree in any wise affect any right which the defendants or any of them other than the said Southern Pacific Railroad Company now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture or unearned lands, and for other purposes," approved March 3, 1887; nor shall this decree in any wise affect any right which the United States may have to hereafter recover from said Southern Pacific Railroad Company the ordinary Government price for any of said lands patented to said company which the Secretary of the Interior may determine have been sold by said company to either or any of the defendants herein in good faith, and which may be patented to such bona fide purchasers in pursuance of said act of March 3, 1887, if any such there be; nor shall this decree in any wise affect any right, title or interest which the defendant Southern Pacific Railroad Company now has or may hereafter acquire to any right of way for one hundred feet in width on each side of the main track of its road, to station buildings, workshops, depots, machine-shops, switches, side-tracks, turntables, water stations, and all grounds necessary for the same.

And it is further ordered, adjudged and decreed that the plaintiff have and recover its costs of this suit taxed at 1924 05/100 dollars.

Done and signed this 19th day of July, 1894.

ROSS,

Dist. Judge.

Decree entered and recorded July 19th, 1894.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Final Decree. Filed Jul. 19, 1894. Wm. M. Van Dyke, Clerk.

**Mandate of Supreme Court U. S. Filed January 7, 1898, in Case No. 184.**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the  
Honorable, the Judges of the Circuit  
[Seal] Court of the United States, for the  
Southern District of California, Greeting:

Whereas, lately, in the United States Circuit Court of Appeals, for the Ninth Circuit, in a cause between the Southern Pacific Railroad Company, et al., appellants, and the United States, appellee, wherein the decree of the said United States Circuit Court of Ap-

peals, entered in said cause on the 24th day of June, A. D. 1895, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the Southern District of California, and was argued by counsel. On consideration whereof, It is now ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed,” as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And, whereas, in the present term of October in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed, by this Court, that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed in all respects as to the Southern Pacific Railroad Company as well as to the trustees in the mortgage executed by that company, and also as to the other defendants, subject, however, to the right of the United States to

proceed in the Circuit Court to a final decree as to those defendants.

And it is further ordered that this cause be, and the same is hereby, remanded to the Circuit Court of the United States, for the Southern District of California:

October 18, 1897.

You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 21st day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States. No. 71. October Term, 1897. The Southern Pacific R. R. Co. et al., vs. The United States. Mandate. Filed Jan. 7, 1898. Wm. M. Van Dyke, Clerk.

Case No. 184.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

The Southern Pacific Railroad Company and D. O. Mills, and Garrit L. Lansing, Trustees; the City Brick Company; Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited; Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. N. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve,

Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Duns-moor, Edward G. Durant, Robert Dunn, Henry Elms, Fairmont Land and Water Company, Farming and Fruit Land Company, George W. Fentrees, S. W. Ferguson, William Fergu-son, William Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, William T. Hamiton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoff-man, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Ken-worthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson,

Lawson M. La Fetra, Stephen L. Leighton, John Robarts and George L. Mesnager, Executors of the Last Will and Testament of Miguel Leonis, deceased, George Loomis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Mensies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Mosely, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, North Pasadena Land and Water Company, James O'Reilly, George L. Ott, Pacific Coast Oil Company, J. H. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph, Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Scherer, George W. Seifert,



Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathern, Eleanor Sussman, D. M. Sutherland, John Sweeney, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moyer Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, J. Youngblood, and Jackson A. Graves,

Defendants.

**Decree Filed August 5, 1898, Pursuant to Mandate of  
Supreme Court U. S. in Case No. 184.**

This cause coming on further to be heard in open court this 5th day of August, A. D. 1898, in pursuance of a mandate of the Supreme Court of the United States, filed herein on January 7th, A. D. 1898, by which mandate it was adjudged that the decree of this Court passed and entered on the 19th day of July, A. D. 1894, "be and the same is hereby affirmed in all

respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that Company, and affirmed also as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants."

And whereas, on said January 7, 1898, upon motion of Mr. Joseph H. Call, Special Assistant United States Attorney, further proceedings in this cause against the defendants other than defendants Southern Pacific Railroad Company, and D. O. Mills, and G. L. Lansing, Trustees, were dismissed without prejudice as to certain tracts of land, and at the same time the United States by their said attorney moved for a further decree against the defendants other than said defendants Southern Pacific Railroad Company, and D. O. Mills and Garrett L. Lansing, as to the balance of the lands described in the bill of complaint and the matter of said motion having come on to be heard and Mr. William F. Herrin and Mr. William Singer, Jr., having appeared as counsel for the defendants, and Mr. Joseph H. Call, having appeared as counsel for the United States, and the matter having been argued and submitted to the Court, and the Court being duly advised in the premises, doth now order, adjudge and decree as to the rights and interests of defendants others

than Southern Pacific Railroad Company and D. O. Mills, and Garret L. Lansing, trustees, as follows:

First. That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant George Loomis, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.,

That defendant George Lomis, is now, and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant, the Southern Pacific Railroad Company, within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

N. E.,  $\frac{1}{4}$  of N. E.,  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N. E.,  $\frac{1}{4}$  N. W.,  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  of N W,  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of Sec. 15, Tp., 3 N, R., 16 W.

S.  $\frac{1}{2}$  of N. E.,  $\frac{1}{4}$  and frac. S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 15 W.

S. E.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 15 W.

Frac. S. W.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 15 W.

N. W.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 16, W.

N. W.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 16 W.

S. E.  $\frac{1}{4}$  of Sec. 7, Tp. 3 N., R. 16, W.

S. W.  $\frac{1}{4}$ , of Sec. 7, Tp. 3 N., R. 16 W.

W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 9, Tp. 3 N., R. 16 W.

Lots 1, 2, 3 and 4 of Sec. 17, Tp. 3 N., R. 16 W.

N. E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of Sec. 21, Tp., 3 N., R. 16 W.

Frac. N. E.  $\frac{1}{4}$  of Sec. 1, Tp., 3 N., R. 17 W.

Frac. N. W.  $\frac{1}{4}$  of Sec. 1, Tp. 3 N., R. 17 W.

S. E.  $\frac{1}{4}$  of Sec. 1, Tp. 3 N., R. 17 W.

S. W.  $\frac{1}{4}$  of Sec. 1, Tp. 3 N., R. 17 W.

Second: That the United States are the owners by title in fee simple absolute of the following described land, subject to right of the defendant the Pacific Coast Oil Company, its heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Pacific Coast Oil Company is now and was on March 3, 1887, a citizen of the United States and that it is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of sec. 5, of the act of Congress, approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said

defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

N. E.,  $\frac{1}{4}$  of N. W.  $\frac{1}{4}$  and Lots 1, 2, 3, and 4 of Sec. 19, Tp. 3 N., R. 15 W.

Third: That the United States are the owners by title in fee simple absolute of the following described lands, subject to the right of defendant Jackson A. Graves, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Jackson A. Graves, is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress, approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

All of frac. sections 3, 5 and 7; all of section 9, N.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  of sec. 17; Tp. 5 N., R. 10 W. All of frac. section 1; frac. N.  $\frac{1}{2}$  and S. E.  $\frac{1}{4}$  of sec. 3; E.  $\frac{1}{2}$  of sec. 11, Tp. 5 N., R. 11 W. All of sections 13, 15, 21, 23, 25 and 27; E.  $\frac{1}{2}$  of section 33; all of sec. 35; Tp. 6 N., R. 11 W.

All of frac. sections 1, 3, 5 and all of sections 9, 11, 13, 15, 17, 21, 23, 27 and 33, Tp. 6 N., R. 12 W.

S.  $\frac{1}{2}$  of sec. 9; all of sections 17, 19, 21 and 29; frac. sec. 31, and all of sections 33, Tp. 7 N., R. 11 W. W.  $\frac{1}{2}$  of SE.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  of sec. 11; all of sec. 13, frac. sec. 19; all of sections 23, 25, 29, 33 and 35, Tp. 7 N., R. 12 W. All of sec. 25, Tp., 7 N., R. 13 W.

Fourth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Mrs. Mary L. Gould, her heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Mrs. Mary L. Gould, is now, and was on March 3, 1887, a citizen of the United States, and that she is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress, approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands

and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1897; said land being described as follows, to wit:

N. W.,  $\frac{1}{4}$  of sec. 31, Tp. 2 N., R. 12 W.

Fifth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant M. W. Stimson, his heirs, executors, or assigns to purchase said land upon certain terms and conditions viz.:

That defendant, M. W. Stimson, is now, and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant, the Southern Pacific Railroad Company, within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5 of

said act of Congress of March 3, 1887, said land being described as follows, to wit:

N. E.  $\frac{1}{4}$  of sec. 35, Tp. 7 N., R. 14 W.

S. E.  $\frac{1}{4}$  of sec. 35, Tp. 7 N., R. 14 W.

Sixth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the rights of defendant Charles M. Stimson, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Charles M. Stimson, is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5 of said act of Congress of March 3, 1887; said land being described as follows, to wit:

N. W.  $\frac{1}{4}$  of sec. 35, Tp. 7 N., R. 14 W.

Seventh: That the United States are the owners by title in fee simple absolute of the following de-



scribed land, subject to the right of defendant Daniel D. Brunk, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Daniel D. Brunk, is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company, within the meaning of section 5 of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887, said land being described as follows, to wit:

W.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of sec. 31, Tp. 2, N., R. 12 W.

Eighth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Stefano Cuneo, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Stefano Cuneo, is now and was on March 3, 1887, a citizen of the United States and that he is a bona fide purchaser of said land from

and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5, of said act of Congress of March 3, 1887; said land being described as follows, to wit:

All of frac. sec. 33, Tp. 4 N., R. 15 W.

Ninth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant Gianbatista Suraco, otherwise known as Gianbatista Sinaco, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Gianbatista Suraco is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5, of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and

for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5 of said act of Congress of March 3, 1887, said land being described as follows, to wit:

All of sec. 29, Tp. 4 N., R. 15 W.

Tenth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant William H. Carlson, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant William H. Carlson, is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company, within the meaning of section 5 of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5 of said act of Congress of March 3, 1887, said land being described as follows, to wit:

All of frac. sec. 19, Tp., 4 N., R. 15 W.

N. E.  $\frac{1}{4}$  of N. E.  $\frac{1}{4}$  of lots 1, 2, 3, 4 and 5, of sec. 13, Tp. 4 N., R. 16 W.

Eleventh: That the United States are the owners by title in fee simple absolute of the following described land subject to the right of defendant Thomas F. Mitchell, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Thomas F. Mitchell, is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5 of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto upon complying with the provisions of section 5 of said act of Congress of March 3, 1887, said land being described as follows, to wit:

Frac. E.  $\frac{1}{2}$  of sec. 3, Tp. 4 N., R. 14 W.

Twelfth: That the United States are the owners by title in fee simple absolute of the following described land, subject to the right of defendant

Ramon Perea, his heirs, executors or assigns, to purchase said land upon certain terms and conditions, viz.:

That defendant Ramon Perea, is now and was on March 3, 1887, a citizen of the United States, and that he is a bona fide purchaser of said land from and under defendant the Southern Pacific Railroad Company within the meaning of section 5 of the act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," for which lands said defendant is entitled to make payment to the United States and secure a patent from the United States thereto, upon complying with the provisions of section 5 of said act of Congress of March 3, 1887, said land being described as follows, to wit:

All of sec. 27, Tp. 5 N., R. 16 W.

Thirteenth: That defendant, Jackson A. Graves, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes,"

said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith, the title of said defendant, and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

S. W.  $\frac{1}{4}$  of sec. 17; all of frac. sec. 19; all of sec. 21; all of sec. 27, Tp. 5 N., R. 10 W. S. W.  $\frac{1}{4}$  of sec. 3; all of frac. sec. 5; all of sec. 9; W.  $\frac{1}{2}$  of sec. 11; Tp. 5 N. R. 11, W. All of frac. sec. 1, Tp. 5 N., R. 12 W. W.  $\frac{1}{2}$  of sec. 33, Tp. 6 N., R. 11 W.

Fourteenth: That defendant D. M. Sutherland, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes," said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith the title of said defendant and of his heirs, grantees and as-

signs to said lands is hereby confirmed, said lands being described as follows, to wit:

S. E.  $\frac{1}{4}$  of sec. 27, Tp. 5 N., R. 9 W.

W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of sec. 29, Tp. 5 N. R., 10 W.

Fifteenth: That defendant Clarence T. Cleve is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith, the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

NW.  $\frac{1}{4}$  of sec. 15, Tp. 5 N., R. 11 W.

Sixteenth: That defendants, Peter Hamilton and Mrs. Thomas Allison, are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands, within

the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said lands having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith, the title of said defendants, and of their heirs, grantees and assigns, to said lands, is hereby confirmed, said lands being described as follows, to wit:

All of sec. 35, Tp. 7 N., R. 13 W.

Seventeenth: That defendants William Ferguson and James Hamilton are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith, the title of said defendants and of their heirs, grantees and assigns to



said lands is hereby confirmed; said lands being described as follows, to wit:

All of sec. 27, Tp. 7 N., R. 13 W.

Eighteenth: That said defendant, Ira H. Bradshaw, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said lands having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith, the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. E.  $\frac{1}{4}$  of sec. 15, Tp. 5 N., R. 11 W.

Nineteenth: That said defendants, Peter Cook, M. L. Wicks, and Alexander Cook, are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled,

“An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes”; said lands having been erroneously patented by the United States to said Southern Pacific Railroad Company; and said defendants and of their heirs, grantees and assigns under said company in good faith the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Sec. 1, Tp. 6 N., R. 13 W.

Twentieth: That defendant, Mary L. Gould, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, “An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes”; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith, the title of said defendant and of her heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lot 2 in S. W.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of sec. 31, Tp. 2 N., R. 12 W.

W.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of sec. 25, Tp. 2 N., R. 13 W.

E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of sec. 25, Tp. 2 N., R. 13 W.

Twenty-first: That defendant, Will D. Gould, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes," said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N. E.  $\frac{1}{4}$  of sec. 25, Tp. 2 N., R. 13 W.

N. W.  $\frac{1}{4}$  of sec. 25, Tp. 2 N., R. 13 W.

Twenty-second: That defendant, James M. Hait, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March

2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of sec. 31, Tp. 2 N., R. 12 W.

Twenty-third: That defendants, Richard Dillon and John Kenealy are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes," said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under such company in good faith the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed, said lands being described as follows, to wit:

Lots 3 and 4 and S.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of sec. 21, Tp. 2 N., R. 14 W.

Twenty-fourth: That defendants, J. Garber and McH. Pierce are bona fide purchasers from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4, of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 5, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendants having purchased said land from and under said company in good faith the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of sec. 25, Tp. 5 N., R. 13 W.

Twenty-fifth: That defendant, Nathan Cole, Jr., is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to

vacate and annul patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said land from and under said company in good faith the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

N.  $\frac{1}{2}$  of sec. 13, Tp. 5 N., R. 11 W.

Twenty-sixth: That defendant, Jacob Harps, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said Company in good faith the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Frac. S. W.  $\frac{1}{4}$  of Sec. 21, Tp. 3 N., R. 15 W.

Twenty-seventh: That defendants, A. W. Potts and J. F. Holbrook, are bona fide purchasers from

and under defendant the Southern Pacific Railroad Company, of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said company in good faith the title of said defendants and of their heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

W.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of Sec. 17, Tp. 2 N., R. 13 W.

Twenty-eighth: That defendant, Pablo Lopez, is a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following-described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendant having purchased said

land from and under said Company in good faith the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed; said lands being described as follows, to wit:

Lots 1, 2, 5 and 6, of Sec. 1, Tp. 2 N., R. 15 W.

Twenty-ninth: That defendant, Jesse Martin Blanchard is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following-described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the Southern Pacific Railroad Company and said defendant having purchased said land from and under said Company in good faith the title of said defendant and of his heirs, grantees and assigns is hereby confirmed; said lands being described as follows, to wit:

Frac. S. W.  $\frac{1}{4}$  of Sec. 17, Tp. 2 N., R. 13 W.

Thirtieth: That defendant Richard Dillon is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company of the following described lands, within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896,



entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes"; said land having been erroneously patented by the United States to the said Southern Pacific Railroad Company, and said defendant having purchased said land from and under said company in good faith; the title of said defendant and of his heirs, grantees and assigns to said lands is hereby confirmed, said lands being described as follows, to wit:

E.  $\frac{1}{2}$  of N. E.  $\frac{1}{4}$  of Lots 1 and 2 in N. E.  $\frac{1}{4}$  of Sec. 29, Tp. 2 N., R. 14 W.

Thirty-first: The defendants, Harry Chandler and Fred Chandler are bona fide purchasers from and under defendant, the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to said Southern Pacific Railroad Company and said defendants having purchased said land from and under said Company in good faith the title of said defendants and of their heirs, grantees and assigns to said lands is hereby

confirmed; said lands being described as follows, to wit:

N. W.  $\frac{1}{4}$  of Sec. 33, Tp. 2 N., R. 14 W.

Thirty-second: That Miguel Leonis, lately deceased, was a bona fide purchaser from and under defendant the Southern Pacific Railroad Company of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within the meaning of said act of Congress of March 2, 1896, said land having been erroneously patented by the United States to said Southern Pacific Railroad Company, and said Miguel Leonis, having purchased said land from and under said Company in good faith the title of said Miguel Leonis and of his heir, executors and assigns, to said lands is hereby confirmed; said lands being described as follows, to wit:

S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  and S. W.  $\frac{1}{4}$  of Sec. 29; all of Sec. 31, Tp. 6 N., R. 12 W.; all of frac. Sec. 7, S.  $\frac{1}{2}$  of Sec. 15; N. W.  $\frac{1}{4}$ ; W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 17; all of Sections 21, 23, and 25, Tp. 6 N., R. 13 W. All of Sec. 1; N. E.  $\frac{1}{4}$  of Sec. 11; and N.  $\frac{1}{2}$  of Sec. 13, Tp. 6 N., R. 14 W.

Thirty-third: That defendant James B. Randol is a bona fide purchaser from and under defendant, the Southern Pacific Railroad Company, of the following described lands within the meaning of section 4 of said act of Congress of March 3, 1887, and within

the meaning of the act of Congress of March 2, 1896, entitled, "An act to provide for the extension of time within which suits may be brought to vacate and annul land patents and for other purposes"; said land having been erroneously patented by the United States to the Southern Pacific Railroad Company, and said defendant having purchased said land from and under said Company in good faith the title of said defendant and of his heirs, grantees and assigns is hereby confirmed; said lands being described as follows, to wit:

All of Sec. 25, and the S.  $\frac{1}{2}$  of Sec. 35, Tp. 6 N., R. 12 W.

All of said lands being north and west of San Bernardino Base and Meridian, California.

It is further ordered, adjudged and decreed that nothing in the original decree entered in this cause on July 19, 1894, shall be construed to enjoin the defendant bona fide purchasers from asserting title to any of the said lands to which rights are by this decree adjudged them.

It is further ordered, adjudged and decreed, that this decree shall not be construed as determining the character of any of the lands described herein with respect to minerals, the title to which is not by this decree confirmed, nor shall it in any wise affect the jurisdiction of the land department of the United States to determine such character of any of said lands, the title to which is not hereby confirmed.

It is further ordered, adjudged and decreed that each party shall pay his own costs in the matter of this motion for further decree.

ROSS,

Circuit Judge.

Decree entered and recorded August 5th, 1898.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co. et al. Decree. Filed Aug. 5, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call. Spl. U. S. Atty.

**Mandate of Supreme Court U. S., Filed April 1, 1902,  
in Case No. 184.**

UNITED STATES OF AMERICA—ss.

The President of the United States of America,  
To the Honorable the Judges of the Cir-  
[Seal]      cuit Court of the United States for the  
Southern District of California, Greet-  
ing:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between the United States, appellant, and The Southern Pacific Railroad Company, George Loomis et al., appellees, wherein the decree of the said Circuit Court

of Appeals, entered in said cause on the 9th day of October, A. D. 1899, is in the following words, viz:

“This cause came on to be heard on the transcript of the record from the Circuit of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby affirmed,” as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And, whereas, in the present term of October, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel:

On consideration thereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed, except as to the lands standing in the name of Jackson A. Graves, and as to those lands be, and the same is hereby reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the Circuit Court of the United States for the Southern District of California for further proceedings in conformity with the opinion of this Court.

January 27, 1902.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 19th day of March, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,  
Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States. No. 25. October Term, 1901. The United States vs. The Southern Pacific R. R. Co., George Loomis et al. Mandate. Filed April 1, 1902. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth  
Circuit, Southern District of California.*

Number 184.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, ATLANTIC AND PACIFIC FIBRE  
IMPORTING AND MANUFACTURING  
COMPANY, LIMITED, JACKSON A.  
GRAVES, and Others,

Defendants.

**Decree Filed September 8, 1902, in Case No. 184,  
Pursuant to Mandate of Supreme Court U. S.**

This cause coming on further to be heard for final decree as to certain defendants, in open court, this eighth day of September, A. D. one thousand nine hundred and two, in pursuance of a mandate of the Supreme Court of the United States issued on the nineteenth day of March, A. D. one thousand nine hundred and two, and Mr. Joseph H. Call, special assistant United States attorney, appearing for the United States, and Mr. William F. Herrin and Mr. William Singer, Junior, the counsel and attorney respectively, appearing for the defendants; and the Court being duly advised in the premises;

It is by the Court now ordered, adjudged and decreed that the United States of America is the owner by title absolute and in fee and unincumbered, of the lands hereinafter described; and defendants, Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and created under the laws of Great Britain, and Jackson A. Graves, have no right, title, estate or interest, or lien in or upon said lands, or any thereof, and they and their servants, agents, employees and successors in interest, are forever enjoined and restrained from having or claiming to have any right, title, interest, estate, or lien in or upon said lands, or any thereof, adverse to the United States, said lands being described as follows, to wit:

All of fractional sections three, five and seven; all of section nine; north half and southeast quarter of section seventeen; township five north, range ten west. All of fractional section one; fractional north half and southeast quarter of section three; east half of section eleven, township five north, range eleven west. All of sections thirteen, fifteen, twenty-one, twenty-three, twenty-five, and twenty-seven; east half of section thirty-three; all of section thirty-five; township six north, range eleven west.

All of fractional sections one, three, five, and all of sections nine, eleven, thirteen, fifteen, seventeen, twenty-one, twenty-three, twenty-seven and thirty-three, township six north, range twelve west.



South half of section seven; south half of section nine; all of sections seventeen, nineteen, twenty-one and twenty-nine; fractional section thirty-one, and all of section thirty-three, township seven north, range eleven west. West half of southeast quarter and southwest quarter of section eleven, all of section thirteen; fractional section nineteen; all of sections twenty-three, twenty-five, twenty-nine, thirty-three and thirty-five, township seven north, range twelve west. All of section twenty-five, township seven north, range thirteen west.

Southwest quarter of section seventeen, all of fractional section nineteen; all of section twenty-one; all of section twenty-seven; township five north, range ten west. Southwest quarter of section three, all of fractional section five; all of section nine; west half of section eleven; township five north, range eleven west. All of fractional section one, township five north, range twelve west.

West half of section thirty-three, township six north, range eleven west.

All of said lands being situated north and west of the San Bernardino base and meridian, in Los Angeles County, State of California; and all patents issued by the United States for any of said lands, are hereby annulled.

It is further ordered, adjudged and decreed that the United States have and recover from defendants,

Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, and from Jackson A. Graves, its costs, taxed at ——— dollars, and that execution issue therefor after sixty days from date hereof.

OLIN WELLBORN,

Judge.

Decree entered and recorded September 8th, 1902.

WM. M. VAN DYKE,

Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Southern District of Cal. United States vs. Southern Pacific Railroad Company. Decree. Filed Sep. 8, 1902. Wm. M. Van Dyke, Clerk. ———, Deputy. Joseph H. Call, for Plaintiff. William Singer, Jr., for Defendants.

**Clerk's Certificate to Judgment-Roll in Case No. 184.**

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, Southern District of California, do hereby certify the foregoing 168 typewritten pages numbered from 1 to 168, both inclusive, to be a full, true and correct copy of the following parts of record in the cause entitled The United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, viz.: Amended bill of complaint, filed September 25th, 1891; order of

substitution of Jackson Alpheus Graves as one of the respondents, made April 25th, 1893; answer presented May 31st, 1893, and ordered filed and filed June 12th, 1893; replication filed August 2d, 1892; Defendants' Exhibits 44, 45, 46, 47 and 48, being agreements between the Southern Pacific Railroad Company and the Atlantic & Pacific Fiber Importing & Manufacturing Company, Limited, dated July 23d, 1885; Defendants' Exhibit 49, resolution Atlantic & Pacific Fiber Importing & Manufacturing Company, Limited made on the 27th day of January, 1893; Defendants' Exhibit 9, being patent No. 1 (branch line), to Southern Pacific Railroad Company of California, dated March 29th, 1876; Defendants' Exhibit 10, being patent No. 2, of the branch line of the Southern Pacific Railroad Company, dated December 27th, 1883; Defendants' Exhibit No. 14, being patent No. 6, to the Southern Pacific Railroad Company, dated December 27th, 1883; Defendants' Exhibit No. 18, being patent No. 9, to the Southern Pacific Railroad Company, dated January 9th, 1885; testimony of J. A. Graves, before the Standing Master and Examiner in Chancery, a final decree filed July 19th, 1894; mandate of Supreme Court filed January 7th, 1898; further decree filed August 5th, 1898; mandate of the Supreme Court, filed April 1st, 1902, and further decree filed September 8th, 1902,

as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court this 30th day of December, 1905.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: Filed May 24, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

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*In the Circuit Court of the United States, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,  
et al.,

Defendants.

**Complainant's Exhibit "L."**

(Leo Longley, Special Examiner.)

*In the Circuit Court of the United States, Southern  
District of California, Southern Division.*

No. 600.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, et al.,

Defendants.

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*In the Circuit Court of the United States, Ninth  
Circuit, Southern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, D. O. MILLS and GARRIT L. LAN-  
SING, Trustees, and the CENTRAL TRUST  
COMPANY OF NEW YORK,

Defendants.

**Bill of Complaint in Case No. 600.**

To the Judges of the Circuit Court of the United States, for the Southern District of California:

The United States of America, by the Attorney General thereof, and George J. Denis, United States Attorney, and Joseph H. Call, Special Assistant United States Attorney, bring this, their bill of complaint against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Gerrit L. Lansing, trustees, each a resident and citizen of the State of California, residing at San Francisco in said State, the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York.

**I.**

And thereupon your orators allege that since the year 1846 the United States have been, and still are, the absolute owners by title in fee simple, and in the possession of, the lands described in Plaintiffs' Exhibit "A" hereto annexed and made a part hereof.

**II.**

Your orators further show: That by the Act of Congress approved July 27th, 1866, entitled "An Act granting lands to aid in the construction of a rail-

road and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company and granted to said company, to aid in the construction of said railroad, a large amount of lands in the State of California and other States and Territories, and to the whole of which said Act your orators refer. (See United States Statutes, vol. 14, p. 292.)

Your orators further show that by section 18 of said Act, Congress authorized the Southern Pacific Railroad Company, a corporation claiming to be organized under the laws of the State of California, to connect with said Atlantic & Pacific Railroad, and to aid in its construction, and upon the condition that it would make such connection, agreed to make to said Southern Pacific Railroad Company a grant of lands upon the same terms, conditions and limitations as were granted to the said Atlantic & Pacific Railroad Company.

### III.

Your orators further show unto the Court, and allege that by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (see U. S. Stats., vol. 16, pp. 573-9), Congress incorporated and created the Texas Pacific Railroad Com-

pany and granted to said company, to aid in the construction of said railroad a large amount of land in the State of California, and other states and territories, and to the whole of which said Act your orators refer.

Your orators further show that said Atlantic & Pacific Railroad Company duly accepted said grant, and the terms and conditions of said act of July 27th, 1866, within the time therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, in the time and manner provided in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the Commissioner of the General Land Office within the time and in the manner provided in said Act, definitely establishing the whole thereof.

That said company filed maps of definite location designating that part of its said line in the State of California, in said office of the Commissioner of the General Land Office, in the year 1872, and as said plats or maps were so filed in the Interior Department; they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid the United States withdrew



from market, and reserved all the odd-numbered sections of land in California, within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and Commissioner of the General Land Office, said withdrawal and reservation of said lands was made then of record in the General Land Office and United States District Land Offices in California by proper plats, diagrams and maps, to all of which your orators refer.

Your orators further show to the Court that by section 23 of said act of Congress, approved March 3, 1871, it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California, by the act of July 27th, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other Railroad Company."

## IV.

Your orators allege that said Atlantic & Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that by the act of Congress of July 6, 1886, (24 Stats., p. 123), all lands and rights to lands granted to and conferred upon said Atlantic & Pacific Railroad Company, and situated within the State of California, were forfeited and resumed to the United States, and said lands were restored to the public domain, including all the odd numbered sections of land for thirty (30) miles on each side of said line of route of said Atlantic & Pacific Railroad Company definitely fixed as aforesaid, between the eastern boundary of California and the Pacific Ocean at San Buena-ventura, which lands are still owned by your orators.

Your orators further show unto the Court and allege that all the lands above described were granted by Congress to said Atlantic & Pacific Railroad Company by said act of Congress making said grant to said Company, and from the date of said grant to said company as aforesaid, until said lands and rights to lands were forfeited as aforesaid, said company claimed to own said lands, and had a prospective as well as a present right to said lands; and during all of that time said lands were reserved by the United

States for the benefit of said Atlantic & Pacific Railroad Company.

V.

Your orators are informed and believe that the defendants herein claim that a line of railroad and telegraph from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the Southern Pacific Railroad Company, within the time and in the manner provided by said act of Congress of March 3d, 1871, above referred to, and that said Company did accept said grant and the terms and conditions thereof, and did, in the year 1874, designate its line by a plat thereof, filed in the office of the Commissioner of the General Land Office, and the defendants claim that the lands herein described were granted to said company by said act, and defendants further claim that commissioners appointed by the President of the United States have reported that said railroad was constructed in all respects in compliance with said act; but your orators allege that all of said claims and pretenses are false and unfounded; and your orators show that said Southern Pacific Railroad Company named in said Act of Congress of March 3d, 1871, has not located or constructed any railroad or telegraph line, or any portion thereof, between the points named in section 23 of said act of March 3d, 1871, within the time or manner provided by said act, or at all, nor filed any plat in the Land Of-

fice, nor has any connection ever been made with said Texas Pacific Railroad, at or near the Colorado River or at any other point.

VI.

And your orators further allege that none of said lands were granted to said Southern Pacific Railroad Company or any of the other defendants by said act of March 3d, 1871, and that said lands were not of the category or of the character of lands described in said act of March 3, 1871, to be granted to the company therein named; but, on the contrary, they were lands reserved and otherwise claimed, and are still owned, by the United States.

VII.

Your orators further allege that on March 3d, 1871, the Southern Pacific Railroad Company named in said Act of Congress of that date, was not authorized by its charter to construct or operate the line of railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado River, and thereafter and before any part of any railroad or telegraph line was located or plat definitely fixing the line filed in the Interior Department, or any railroad constructed between the points named in said section 23 of said act of March 3d, 1871, and before said grant took effect, and on August 12th, 1873, said Southern Pacific Railroad Company, did, without any authority from the United States or from the Congress of the United States, enter into certain articles of incorporation

and consolidation with the Southern Pacific Branch Railroad Company, a corporation, thereby creating a new corporation, and taking new powers under such new charter from the State of California, and thereby surrendering to the United States all the grants, rights, franchises and privileges theretofore conferred upon the first said Southern Pacific Railroad Company.

### VIII.

And your orators further allege that in the year 1874, and before any part of the railroad between the points named in said section 23 of said act of Congress of March 3, 1871, had been constructed or completed, and before said grant took effect, said Southern Pacific Railroad Company created by said articles of incorporation and consolidation, on August 12th, 1873, consolidated with other railroad companies, corporations, creating another and new corporation, without any authority from the United States, and taking its new charter from the State of California, and thereby surrendering to the United States all the franchises, grants, rights and privileges, if any then remained, which had been conferred by the Congress of the United States under said act of Congress of March 3, 1871.

### IX.

Your orators further show and allege that the officers of the Interior Department have erroneously

and without any authority of law caused to be issued to defendant Southern Pacific Railroad Company patents of the United States, in due form of law, for the tracts of land described in Plaintiffs' Exhibit "A," hereto attached, and made a part hereof. That more than ninety days prior to the commencement of this suit the Secretary of the Interior demanded in writing of said Southern Pacific Railroad Company a relinquishment and reconveyance of said lands to the United States, which demand was refused and not complied with by said company.

#### X.

Your orators further allege that the defendants herein, and each of them, claim some interest in the said lands under and by virtue of the said act of March 3, 1871, and not otherwise. The nature and extent of such claims are unknown to your orators, but your orators allege that such claims are not based upon any legal or equitable right to such lands or any thereof.

Your orators further show that said adverse claims of said defendants hinder and embarrass your orators, and prevent the Department of the Interior from selling and otherwise disposing of said lands under the laws of the United States.

#### XI.

Your orators further allege that defendants herein,

while claiming and pretending to own some interest in said lands, are now unlawfully removing from said lands wood, timber, minerals, and other valuable deposits, and unlawfully threatening to chop down other trees on said land, and remove other minerals and valuable deposits thereon, and unless enjoined will do so, to the great and irreparable injury of your orators.

## XII.

Your orators further allege that the amount in controversy in this suit, exclusive of interest and costs, exceeds the sum or value of five thousand (5,000) dollars.

In tender consideration whereof, and forasmuch as your orators are remediless at and by the strict rules of the common law, and can only be relieved in a Court of equity, your orators pray that their title to said lands described in said Exhibit "A" hereto annexed, may be quieted; that said pretended patents be vacated and decreed to be void, and that the defendants and each of them be forever enjoined from asserting or claiming any right, or title, to said lands adverse to your orators, and that the defendants be forever enjoined from chopping down or carrying away any wood, trees, or timber upon said land, and from removing any minerals or other valuable deposits thereon.

338. *Southern Pacific Railroad Company et al.*

Your orators further pray that the Court will define and determine the rights of your orators to the odd numbered sections of land in California within the thirty-mile limits of the said line of route of said Atlantic & Pacific Railroad Company, as shown by the maps of said Atlantic & Pacific Railroad Company, on file and of record in the General Land Office, and will decree that the United States are the owners in fee of said lands, as against all rights and claims of the defendants based upon or through said grants made by the United States by said Acts of Congress, approved July 27, 1866, and March 3, 1871, except the lands embraced in pending suits of your orators, against said Southern Pacific Railroad Company, described as follows:

“All of the sections of land designated by odd numbers in township three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17), and eighteen (18), west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19) west; also townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both



numbers included, San Bernardino Base and Meridian, California," as to which lands no relief is sought by this bill.

Your orators pray for such other and further relief as to the Court may seem equitable, and for costs of this suit, and your orators will ever pray.

May it please your Honors to grant unto your orators a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the above-named defendants, the Southern Pacific Railroad Company, D. O. Mills, and Gerrit L. Lansing, trustees, and Central Trust Company of New York, and to each of the other defendants above-named, commanding them on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and to good conscience, and your orators will ever pray.

Your orators expressly waive answer under oath by the defendants and each of them.

RICHARD OLNEY.

Attorney General.

JOSEPH H. CALL,

Special Asst. United States Atty.

GEORGE J. DENIS,

United States Attorney.

[Endorsed]: No. 600. In United States Circuit Court, Southern Dist., Cal. United States, vs. Southern Pacific Railroad Co. Bill. Filed May 14, 1894. Wm. M. Van Dyke, Clerk. Joseph H. Call, Spl. Asst. U. S. Atty.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

No. 600.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY,

D. O. MILLS, and GARRIT L. LANGSING,

Trustees, and the CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

**Answer to Complaint in Case No. 600.**

The joint and several answer of the Southern Pacific Railroad Company, D. O. Mills, and Gerrit L. Lansing, Trustees, and the Central Trust Company of New York, to the Bill of Complaint of the United States, plaintiff.

These defendants respectively, now and at all times saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and

imperfections in the said bill of complaint, contained, for answer thereto, or to so much thereof as these defendants are advised that it is material or necessary for them to make answer to, severally answering, say:

I.

The defendants deny that since the year 1846, the United States have been and still are the absolute owners by title in fee simple, or by any title whatsoever, or in anywise or at all, or as alleged in the said bill of complaint, or have been or still are in the possession of the land described in Plaintiff's Exhibit "A," annexed to the complaint, and made a part thereof.

On the contrary, defendants allege that from the year 1846, continuously, and until July 27, 1866, the plaintiff was the owner in fee simple absolute, in possession, and entitled to the possession of all the lands described in exhibit "A" annexed to the plaintiff's bill of complaint; that on the said last mentioned date the Congress of the United States granted a portion of said lands to the defendant; the Southern Pacific Railroad Company, as is hereinafter, with a description of the portion of said land so granted, particularly set forth; that as to said portion of said lands hereinafter described and particularly set forth, the defendants deny that the plaintiff is, or at any time since July 27, 1866, has been the owner in fee simple absolute or otherwise, or in any way, manner, or at

all, or in possession or entitled to the possession thereof.

The defendants allege that from the year 1846 continuously, and until March 3, 1871, the plaintiff was the owner in fee simple absolute, and in possession and entitled to the possession of all the lands described in exhibit "A" other than such thereof as were granted to the defendant, the Southern Pacific Railroad Company, on July 26, 1866, as aforesaid; that on March 3, 1871, the Congress of the United States granted all the lands described in the said exhibit "A," to the defendant, the Southern Pacific Railroad Company, which had not theretofore been granted to the said Southern Pacific Railroad Company by the Act of Congress of July 27, 1866, and the lands so granted to the said defendant, the Southern Pacific Railroad Company, on March 3, 1871, are hereinafter particularly set forth and described.

Defendants deny that the plaintiff is, or at any time since March 3, 1871, has been the owner in fee simple absolute or otherwise, or in possession or entitled to the possession of any of the lands described in Plaintiff's Exhibit "A."

## II.

The defendants admit that by an Act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and

telegraph line from the states of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company, and granted to said company to aid in the construction of said railroad a large quantity of public lands; but they aver that such grant was made and subject to the conditions and the limitations in said Act mentioned, to which said Act of Congress reference is hereby made (United States Statutes, volume 14, page 292); and the defendants refer to the whole of said Act of Congress.

The said defendants aver that the Southern Pacific Railroad Company, one of the defendants herein, is a corporation organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and is a resident and inhabitant of the Northern District of said State and a citizen thereof.

The defendants deny that by section 18 of the said Act of Congress, the United States or Congress agreed to make a grant of lands to the said Southern Pacific Railroad Company upon the same terms, conditions and limitations as were granted to the said Atlantic & Pacific Railroad Company, or upon the condition that the Southern Pacific Railroad Company would make connection with the said Atlantic & Pacific Railroad Company. On the contrary, said defendants allege that by Section 18 of said Act of Congress of July 27, 1866, Congress authorized the

Southern Pacific Railroad Company to connect with the said Atlantic & Pacific Railroad Company at such point, near the boundary line of the State of California as the Southern Pacific Railroad Company should deem most suitable for a railroad line to San Francisco, and did in direct terms make a grant of lands in the State of California to the Southern Pacific Railroad Company, and subject to the conditions and limitations therein provided.

### III.

Said defendants admit that by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road and for other purposes" (United States Statutes, volume 16, pages 573-579), Congress incorporated the Texas Pacific Railroad Company, and granted to said Company, to aid in the construction of said railroad, a large quantity of public lands; but said defendants deny that said grant ever attached to or affected any lands within the State of California, and they aver that such grant was made subject to the conditions and limitations in the said Act last mentioned, to which said Act of Congress reference is hereby made, and these defendants refer to the whole of said Act of Congress

That said defendants deny that said Atlantic & Pacific Railroad Company duly or in anywise accepted said grant.

Said defendants deny that the said Atlantic & Pacific Railroad Company did within the time required, or in any manner or at all, designate upon plats or maps, the whole of its line or any part of its line of route under said Act of July 25, 1866, or did definitely locate the same from Springfield, Missouri, by way of the points and places named in the said Act in the time and manner provided in said Act, to the Pacific Ocean at San Buenaventura, in the State of California, or to any point on the Pacific Ocean.

Said defendants further deny that the said Atlantic & Pacific Railroad Company did file plats or maps designating said line of route in the office of the Commissioner of the General Land Office in the time and in the manner provided in the said Act, definitely establishing the whole or any part thereof; and the said defendants further deny that said Atlantic & Pacific Railroad Company did designate or locate any of its line or route in the State of California, between any points therein, and deny that it ever located or adopted or designated, any part of said line in the State of California, or in any manner provided in the said Act or at all.

Said defendants deny that said Atlantic & Pacific Railroad Company filed maps of definite location, designating part of its said line in the State of California, in the said office of the Commissioner of the General Land Office, in the year 1872, or at any time

or at all, and deny that as said plats or maps were so filed in the Interior Department, they were each then approved by the Secretary of the Interior, and deny that upon the filing of such maps or plats as aforesaid, the United States withdrew from market and reserved all or any of the odd numbered sections of land in California, within thirty miles of said line of route, or including the lands hereinafter described, and deny that in pursuance of orders of the Secretary of the Interior, and the Commissioner of the General Land Office, said withdrawal or reservations of said lands was made then of record in the General Land Office and the United States District Land Office in California, by proper plats, documents and maps, or in any manner or at all; the said defendants further deny that any lands in suit herein fell within the thirty-mile limits of any such line, or were ever withdrawn from market, or reserved for or for the benefit of said Atlantic & Pacific Railroad Company; and deny that the Atlantic & Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map or maps thereof, filed in the office of the Commissioner of the General Land Office; or made or filed a map or maps of definite location of route or designation of route from the Colorado River to the Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.



Said defendants aver that the said Atlantic & Pacific Railroad Company never made any actual or general or definite or any location whatsoever of its line or route of railroad in California.

Said defendants further aver that the pretended location of a route by said Atlantic & Pacific Railroad Company in California, never was or became an actual or a definite location or designation of a general route for a railroad from San Francisco to the Needles, or from the Needles to the Pacific Ocean, or from the point of crossing the Colorado river selected by said Atlantic & Pacific Railroad Company, to the Pacific Ocean, and further aver that such pretended location or designation of route was a colorable and fraudulent location or designation of a route and that such route was also upon an unauthorized and impracticable line; that the maps filed by the said Atlantic & Pacific Railroad Company in the Interior Department and in the office of the Secretary of the Interior, and in the office of the Commissioner of the General Land Office, purporting to show a designation of route in the State of California, and embracing the lands in controversy, were fraudulent, spurious, and manufactured, and deceived the officers of the Government, and were intended so to do

Defendants further aver that the Atlantic & Pacific Railroad Company transmitted to the office of the Secretary of the Interior on March 8th, 1872,

four maps purporting to show the location of portions of the line of railroad of the Atlantic & Pacific Railroad Company: First, from San Francisco to San Miguel Mission, California; second, from a point on the western boundary line of Los Angeles, California, to a point in township seven north, range seven east, of San Bernardino Base and Meridian in said State; third, from the eastern boundary of Arizona, to the Colorado River, and fourth, from the western boundary of Texas to the western boundary of New Mexico. That these maps and all four of them were described upon their face and by endorsements thereon, to be maps of definite location over the territory described thereon, and named therein; that the said maps above mentioned as "third" and "fourth" are the result of actual surveys and are made and prepared to a certain extent in conformity with the rules and regulations of the Interior Department issued and provided for the location of lines of route of railroads receiving land grants from the United States.

Said defendants aver that the said map of the Atlantic & Pacific Railroad Company above mentioned as "first," from San Francisco to San Miguel Mission, California, and said map above mentioned as "second" from a point on the western boundary line of Los Angeles, California, to the point in township

seven north, range seven east to San Bernardino Base and Meridian in said State of California purporting to include the lands in controversy, were not and are not the result of actual surveys made for the purpose of locating the line of railroad of the Atlantic & Pacific Railroad Company in said State; but on the contrary are spurious and fraudulent and depict an impracticable, unsurveyed and unauthorized line of proposed railroad, entirely ignoring the topography of the earth's surface, and are without reference thereto.

That the said last mentioned map was on or about the 8th day of March, 1872, tendered to the Secretary of the Interior, by one C. J. Hillyer as attorney for the said Atlantic & Pacific Railroad Company as a "map designating the line or route of said railroad from a point on the western boundary line of Los Angeles County in the State of California, to a point in township seven north and range seven east of San Bernardino Base and Meridian in said State." That the said map or plat bears on the face thereof an affirmation by one J. Blickensderfer, Jr., purporting to be the chief engineer of the Atlantic & Pacific Railroad Company, to the effect that one E. N. Robinson during the period since the first day of June, 1871, and previous to said first day of June, 1871, had been employed as deputy or division engineer under said Blickensderfer, and that the said deputy or division

engineer as shown by his field notes did actually survey and mark upon the ground the line or route of the Atlantic & Pacific Railroad from a point on the westerly boundary line of Los Angeles County, to a point in township seven north and range seven east of San Bernardino base and meridian, State of California, in the sections and at the times respectively designated by dates included between the flagstuffs upon and along the alleged line of route of said railroad, as delineated on said map, and the said map purported to show the lines of the public surveys in connection with the surveyed line of the route; that such statements embodied in the said affirmation upon the face of said map, were made with the intent and purpose of thereby securing the acceptance of such map by the Secretary of the Interior and the Commissioner of the General Land Office and a withdrawal of lands thereunder, but such statements were and are wholly and willfully false. That the said Robinson never did, as shown by his field notes, or otherwise, survey or mark upon the ground any line or route of the Atlantic & Pacific Railroad as delineated upon said map, and the said map does not show the lines of public surveys in connection with any surveyed line of route of said Atlantic & Pacific Railroad. That the said map or plat bears on the face thereof, a certificate of one Uriel Crocker, as president, the said J. Blickensderfer, Jr., as chief

engineer of said Atlantic & Pacific Railroad Company, certifying that the said map shows the line or route of said railroad from a point on the western boundary of the County of Los Angeles, to a point in township seven north, range seven east of San Bernardino Base and Meridian, in the State of California as definitely fixed in compliance with said Act of Congress, and that the date of the field notes thereof, are truly indicated along the line from station to station upon said map. Such statements so embodied in the said certificate upon the face of said map, were made with the like intent and purpose as the statements in the affirmation aforesaid, but were also wholly and willfully false. The said map did not show any line of route which has been definitely fixed in compliance with said Act of Congress and did not truly indicate the dates of any field work of or on any such line or route.

The said map did not and does not show any practicable or eligible route for any railroad, but was and is a mere sham.

Said defendants further aver that the said four maps being so received together by the Interior Department upon said date, deceived the officers of the Interior Department, who acting under said deception, and believing said four maps to be similar in character and each and all of them to display properly and in conformity with the regulations of the In-

terior Department, the true and definite location of the proposed line of railroad of the Atlantic & Pacific Railroad Company, caused a letter to be issued from the General Land Office on April 22, 1872, which letter is in the words and figures, following, to wit:

“DEPARTMENT OF THE INTERIOR.  
GENERAL LAND OFFICE.

April 22, 1872.

Registrar and Receiver, Los Angeles, Cal.

Gentlemen: I transmit herewith a diagram showing the definite location of the Atlantic & Pacific Railroad, under Act of July 27, 1866, Stat., Vol. 14, p. 292 from a point on the Western boundary of Los Angeles County, to a point in T. 7 N. R. 7 E. on the San Bernardino in your district, showing also the twenty and thirty mile limits of the land grant under said Act, and you are hereby directed to withhold from pre-emption of homestead entry, private sale, or location, all of the odd numbered sections falling within those limits both surveyed and unsurveyed, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road was designated by filing a plat thereof in this office, which was March 12, 1872. The even numbered sections within the twenty mile limit, you will increase in price to \$2.50

per acre, and dispose of them at that ratability and only under the pre-emption and homestead laws. The even sections outside of the twenty mile limits are not affected by this withdrawal. Claims initiated by settlers under the pre-emption laws prior to the right of the road attaching March 12, 1872, are not affected by this order.

Be pleased to acknowledge the receipt of this letter without delay.

Very respectfully,

WILLIS DRUMMOND,

Commissioner."

Said defendants aver that said maps "First" and "Second" last above referred to, are not maps showing the definite location of the line of railroad of the Atlantic & Pacific Railroad Company in the State of California; or in reference to any portions thereof; that they are not maps showing the general route of said Atlantic & Pacific Railroad Company in the State of California, and were not intended so to be; that the said Atlantic & Pacific Railroad Company intended that said maps should be taken and accepted as proper and sufficient maps of the definite location of the line of railroad of the said Atlantic & Pacific Railroad Company in certain portions of the State of California, and embracing territory which includes the lands in controversy in this cause. That the said Interior Department accepted the four maps

last above mentioned unaware of the fraud and deception being perpetrated upon it, or the officers thereof; and therefore caused the letter above quoted to be sent by the Commissioner of the General Land Office to the Registrar and Receiver at Los Angeles.

That said defendants further aver that said letter, in view of said deception and said fraud, and of the true character of the said maps, "first" and "second," did not and cannot operate as an order of withdrawal of any lands in the State of California, for the benefit of said Atlantic & Pacific Railroad Company. The said defendants further allege that no lands ever were withdrawn in the State of California or reserved or in anywise taken out of the public domain for the benefit of the said Atlantic & Pacific Railroad Company, or against the rights of the Southern Pacific Railroad Company, one of the defendants herein, or against the rights of the other defendants.

That no rights to or interest in any public lands were or could be acquired by said Atlantic & Pacific Railroad Company by reason of any such attempted location or designation, or any act of acceptance thereof, on the part of the Interior Department.

Said defendants further aver that the said Atlantic & Pacific Railroad Company transmitted on the 15<sup>th</sup> of August, 1872, to the Interior Department, two other maps, purporting to designate the line of its



railroad in the County of San Bernardino, State of California. First, from a point in township seven north, range seven east, to the Colorado River, and second, from a point between the San Miguel Mission and the Los Angeles County line. That said maps are likewise spurious, fraudulent, and manufactured, and do not depict or show any surveyed route or line of road between the points name of the Atlantic & Pacific Railroad Company in the State of California. That said maps depict a route wholly impracticable, ignoring the topography of the earth's surface, and not upon a route that ever was surveyed by said Atlantic & Pacific Railroad Company in the State of California, and not upon a line or route which was intended to be or could be the definite location or location of general route of the line of railroad of the Atlantic & Pacific Railroad Company; that no rights to or interest in any public lands were or could be acquired by said Atlantic & Pacific Railroad Company by reason of said maps, or attempted location or designation, or by the acceptance of any of the said maps by the Interior Department.

#### IV.

Said defendants further allege that in the year 1869, the said Atlantic & Pacific Railroad Company filed a map in the Interior Department purporting to show the definite location of its line of road in the State of California, from its point of crossing the

Colorado River to the Pacific Ocean, which definite line of location passes through the said State of California far to the north of the lands in controversy, and did not embrace any thereof. That from said year 1869, and down to the year 1885, said Atlantic & Pacific Railroad Company continuously reiterated its claim before the Interior Department that its line of definite location in the State of California, was located by said map of 1869.

Said defendants deny that said Atlantic & Pacific Railroad Company was authorized by said Act, or any other Act of Congress to locate or construct a line of railroad from the point of crossing of the Colorado River to San Francisco. They are advised and believe, and therefore aver that under the said Act of Congress the defendant, the Southern Pacific Railroad Company alone was authorized to construct a line of railroad from the point of crossing of the Colorado River to San Francisco, and to acquire lands under said Act of Congress along and opposite to said line and that the only right which the Atlantic & Pacific Railroad Company ever acquired to locate or construct any line of railroad in the State of California, was the right to locate and construct a road from the crossing of the Colorado river by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic & Pacific Railroad Company.

## V.

And these defendants further aver that on July 27, 1866, all the lands described in the said exhibit "A" were vacant and unappropriated public lands, to which the United States had full title; and none of said lands had therefore been granted; sold or otherwise disposed of, nor were any of said lands reserved, occupied by homestead settlers, or pre-empted, nor were any of said lands mineral lands, and all of said lands were then free from pre-emption or other claims or rights; and all of the said lands have ever since so remained, except as is hereinafter set forth and stated.

That by said Act of Congress, approved July 27, 1866, the defendant, the Southern Pacific Railroad Company was unauthorized to connect with the Atlantic & Pacific Railroad at such point near the boundary line of the State of California, as the Southern Pacific Railroad Company should select, and construct a railroad from such point to the City of San Francisco; and to aid in the construction thereof, the said act made a grant of lands to the defendant, the Southern Pacific Railroad Company to the amount of ten odd numbered sections per mile on each side of the line of railroad which it should adopt.

That within two years after the passage of the said Act, the defendant, the Southern Pacific Railroad

Company, filed in the office of the Secretary of the Interior, its acceptance of the terms, conditions and impositions of the said Act; which acceptance was in writing, under the corporate seal of the said Company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to January 3, 1867, the defendant, the Southern Pacific Railroad Company, duly established the general route of the entire railroad, which it was authorized by the said act to construct, and on the said date, filed in the office of its Commissioner of the General Land Office, a plat or map designating the said general route, and the entire line of the railroad, which map was thereupon duly accepted and approved by the Commissioner of the General Land Office, and the Secretary of the Interior, and on March 22, 1867, the said officers withdrew all the odd numbered sections within thirty miles of the railroad line shown upon the said plat from pre-emption and homestead entry, sales and other dispositions by the United States and that all the odd numbered sections within thirty miles of the said railroad line, have remained so withdrawn and reserved from pre-emption and homestead entry, sales and other disposition continuously since January 3, 1867, and down to the present time. That the said company commenced the construction of its railroad within the time allowed therefor, and definitely located and constructed those

portions thereof of more than 25 miles each extending from San Francisco to Mojave in ten several sections prior to February 1, 1878, except that section or portion between Tres Pinos and Alcalde and definitely fixed and actually constructed that portion thereof extending from Mojave to its connection with the Atlantic & Pacific Railroad at Needles on the Colorado River, in several sections, prior to December, 1884; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said Act and Acts amendatory thereof. That on August 7, 1871, the said company filed in the General Land Office and Department of the Interior, a plat, duly showing the section of its railroad extending from the said commencement point to Gilroy, as the same had been definitely located and constructed, and at various different dates intermediate, August 7, 1871, and December 1, 1884, filed similar plats showing all the other sections of its entire railroad from San Francisco to the Needles, as the same had been definitely located and constructed; each and all of which plats were accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior.

The commissioners duly appointed by the President of the United States for that purpose, examined the said railroad as it was completed in sections, and

prior to December 27, 1884, duly reported to the President of the United States that all of the said railroad had been completed in a good, substantial and workmanlike manner, and in all respects as required by the said act.

That at the times aforesaid and when the said Southern Pacific Railroad Company filed its said map designating the line of route of its railroad, many of the odd sections within the twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, pre-empted and otherwise disposed of by the United States; and the aggregate quantity of such lands in lieu of which the said company was granted other lands by said Act, was and is more than equal to the aggregate quantity of all the odd numbered sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles of the said railroad line, were granted to the Southern Pacific Railroad Company by the said Act. And at all the times when the said railroad was definitely fixed and the plats thereof filed as aforesaid, the aggregate quantity of the odd sections within twenty miles of the definitely fixed line of railroad, which were granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of by the United States, and in lieu

of which the said company was granted other lands, was and is more than equal to the aggregate quantity of all the undisposed of odd sections beyond twenty miles and within thirty miles of the said definitely fixed railroad line; and all of the odd sections which were not otherwise disposed of on January 3, 1867, situated within thirty miles from the said definitely fixed railroad line, were granted to the Southern Pacific Railroad Company by the said Act of Congress.

That the said company is, and for a long time prior to the commencement of this suit was entitled to have patents issued by the Government of the United States to it for all the lands granted to it as aforesaid, within thirty miles on each side of its said railroad line; and prior to the commencement of this suit patents were duly issued to the said company for twelve thousand three hundred and eighteen and seventy-seven one hundredths acres of the lands described in exhibit "A," annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists under the direction of the Secretary of the Interior one hundred and fifty— thousand and eighty-three and twenty-eight one hundredths acres of the lands mentioned in the plaintiff's bill of complaint, lying within twenty miles of the said railroad line, and paid for costs and fees thereon, exacted and col-

lected of it by the United States, the sum of seven thousand dollars. That no part of the said sums has been tendered or repaid to the said company by the United States.

That all the lands granted to the defendants, the Southern Pacific Railroad Company, by the said Act of July 27, 1866, are particularly described and shown by Defendant's Exhibit "A," annexed to and made a part of this answer.

#### VI.

And these defendants further aver that on March 3, 1871, all the lands described in the exhibit "A," annexed to the plaintiff's bill of complaint, and not granted to the Southern Pacific Railroad Company by the said Act of July 27, 1866, were vacant and unappropriated public lands to which the United States had full title.

That by section 23 of said Act of Congress, approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," the defendant, the Southern Pacific Railroad Company, was authorized to construct a railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to a point on the Colorado River at or near the southeastern boundary of the State of California, along such line as the said company should adopt; and to aid in the construction thereof, the said



section 23 made a grant of land to the said Southern Pacific Railroad Company, to the amount of ten sections per mile on each side of the line of railroad which it should adopt, not mineral in character, to which the United States had full title, not reserved, granted, or otherwise appropriated, and free from preemption or other claims and rights at the time the said Company filed a plat in the office of the Commissioner of the General Land Office, designating the line of its railroad. And the said section further provided that the Southern Pacific Railroad Company should select other lands, under the direction of the Secretary of the Interior, from the odd-sections within ten miles beyond the limits of the said granted sections, in lieu of such of the said granted sections as were granted, sold, reserved, occupied by homestead settlers, or otherwise disposed of at the date the said plat designating the line of railroad was filed in the office of the Commissioner of the General Land Office.

That the said Section 23 did not, nor did the said land-grant, defeat or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or of any other railroad company; except that the land grant made by it to the Southern Pacific Railroad Company conflicted with and overlapped the land grant made to the same Company by the Act approved July 27th, 1866, hereinbefore set forth, as

is particularly shown by exhibit "A," annexed hereto.

That in April, 1871, the defendant, the Southern Pacific Railroad Company, filed in the office of the Secretary of the Interior, its acceptance of the terms, conditions and impositions of the said act of March 3, 1871; which acceptance was in writing under the corporate seal of the company, and was duly executed in pursuance of the direction of its board of directors, theretofore made.

That prior to April 3, 1871, the said Southern Pacific Railroad Company duly established the general route of the entire railroad, which it was authorized by the said Act of March 3, 1871, to construct, and on the said date filed in the office of the Commissioner of the General Land Office, a plat or map designating the general route and line of said railroad from Tehachapi Pass by way of Los Angeles to Yuma; which map was thereupon duly accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior, and on April 21, 1871, the said officers withdrew all the odd numbered sections within thirty miles of the railroad line shown upon the said plat, from pre-emption and homestead entry, sales and other dispositions by the United States, and including that portion of the lands in controversy hereinafter described; and all of said lands which lie within thirty miles of the said rail-

road line, have remained so withdrawn and reserved from pre-emption and homestead entry, sales and other disposition continuously since April 21, 1871, and down to the present time.

That the said company commenced the construction of its said railroad in the year 1871, and prior to December 28, 1877, definitely located and constructed its entire railroad from Tehachapi Pass by way of Los Angeles to Yuma, along the line of route designated by its said plat filed April 3, 1871; and all of said railroad was so completed in a good, substantial and workmanlike manner, and in all respects as required by the said act. That the said railroad was completed in five several sections, and plats showing the line thereof as the same was definitely located and constructed, were filed in the General Land Office and the Interior Department at various different dates after the year 1871, and prior to December 28, 1877; each and all of which plats were accepted and approved by the Commissioner of the General Land Office and the Secretary of the Interior.

That Commissioners duly appointed by the President of the United States for that purpose, examined the said railroad as it was completed in sections, and prior to December 28, 1877, duly reported to the President of the United States that all of the said railroad had been completed in a good, substantial

and workmanlike manner, and in all respects as required by the said Act.

That at all the times aforesaid when the Southern Pacific Railroad Company filed its map designating the line of route of its railroad and the said railroad was definitely fixed, many of the odd sections within twenty miles of the railroad line shown thereon, were granted, sold, reserved, occupied by homestead settlers, pre-empted and otherwise disposed of by the United States; and the aggregate quantity of such lands in lieu of which the said company was granted other lands as aforesaid, was and is more than equal to the aggregate quantity of all the undisposed of odd sections beyond twenty miles and within thirty miles of the said railroad line; and all of the odd sections which were not otherwise disposed of, on April 3, 1871, situated within thirty miles from the said railroad line, were granted to the Southern Pacific Railroad Company by the Act of March 3, 1871.

That said company is, and for a long time prior to the commencement of this suit, was, entitled to have patents issued by the Government of the United States to it, for all the lands granted to it as aforesaid, within thirty miles on each side of its said railroad; and prior to the commencement of this suit patents were duly issued to the said company for thirty thousand four hundred and twenty 08/100ths

acres of lands described in exhibit "A" annexed to the plaintiff's bill of complaint.

That prior to the commencement of this suit the Southern Pacific Railroad Company duly selected in lists under the direction of the Secretary of the Interior, sixty-six thousand and eighty-one and forty-two one hundredths acres of lands mentioned in the plaintiff's bill of complaint, lying within twenty miles of the said railroad line, and eighty-eight thousand nine hundred and fifty-seven 06/100ths acres of the lands described in the said exhibit "A" lying within thirty miles of the said railroad line, and paid for costs and fees thereon exacted and collected of it by the United States the sum of nine thousand dollars. That no part of the said sum has been tendered or repaid the said company by the United States.

## VII.

Said defendants admit that by Act of Congress approved July 6, 1886, entitled "An Act to forfeit the lands granted to the Atlantic & Pacific Railroad Company, etc." (24 Stats., p. 123) all the lands and rights to lands in California, theretofore granted or conferred upon said Atlantic & Pacific Railroad Company were declared forfeited and restored to the public domain; but they deny that any lands in controversy were ever granted to the Atlantic & Pacific

Railroad Company, or were ever forfeited or resumed, or restored to the public domain by any act of forfeiture or by said act of forfeiture. They admit and aver that no part of said Atlantic & Pacific Railroad had at the time of the passage of said Act of 1886, or has at any time since, been constructed in the State of California.

Said defendants deny that all of the lands above described, or any of them, or any of the lands in controversy herein, were granted by Congress to said Atlantic & Pacific Railroad by Act of Congress of July 27, 1866; and they furthermore deny that from the date of said Act as aforesaid, up to any period of time, or until said Act of forfeiture, said Atlantic & Pacific Railroad Company claimed to own said lands or any thereof.

Said defendants deny that said Atlantic & Pacific Railroad Company had or claimed to have a prospective right or a present right or a prospective as well as a proper right to said lands in controversy. Said defendants furthermore deny that during all of said times or during any of said time, or between any of the dates mentioned, said lands were reserved by the United States for the benefit of said Atlantic & Pacific Railroad Company.

#### VIII.

These defendants admit that they make the claims

as are set forth in subdivision V of plaintiff's bill of complaint, except that the Southern Pacific Railroad Company designated the line and filed the plat therein mentioned in the year 1871, instead of 1874; but they deny that such claims in whole or in part, are a pretense, false or unfounded, and aver that said claims are in each and every particular sincere, true, well founded and valid. And these defendants deny that the Southern Pacific Railroad Company named in the Act of Congress of March 3, 1871, has not located and constructed the railroad and telegraph line between the points named in section 23 of the said Act, within the time and manner provided in said Act; and deny that the said company has not filed a plat in the Land Office, nor made a connection with the Texas Pacific Railroad at or near the Colorado river, and deny that none of the said lands were granted to said Southern Pacific Railroad Company or to any of the other defendants by said Act of March 3, 1871, or that said lands are not of the category or of the character of the lands described in said Act of March 3, 1871, to be granted to the company therein named, and deny that said lands were lands reserved or otherwise claimed or still owned by the United States; on the contrary, said defendants allege, that the said lands were granted by said Act of Congress of March 3, 1871, to the said defendant, the Southern Pacific Railroad Company, and were

earned by the said defendant, the Southern Pacific Railroad Company, by the construction of its road within the time and manner required by law, and as hereinbefore stated.

The defendants further deny that their claim or claims to the said lands hinder or embarrass the plaintiff, or prevent the Department of the Interior from selling or otherwise disposing of said lands, or any part thereof; on the contrary, the defendants allege that the plaintiff has no right, title or interest whatsoever in or to said lands or any part thereof; that all of the said lands were granted to and are owned by these defendants as is hereinbefore particularly set forth, and that the Department of the Interior has no authority or power to sell or in anywise dispose of said lands.

## IX.

Answering paragraph VII of the plaintiff's complaint, the defendants deny the same, and all thereof.

Furthermore, said defendants allege that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California, under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto,"



which Act is printed in the Statutes of California, 1861, p. 601, and pray to refer thereto; that said corporation was formed for the purpose and with the corporate power as stated in the Articles of Incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through said County of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River, and they refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

The defendants furthermore allege that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California, in that behalf, the said Southern Pacific Railroad Company, the San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, corporations organized and existing under the laws of the State of California, entered into Articles of Consolidation and Amalgamation, consolidating and amalgamating their capital stock, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California,

and such Articles were signed, published and filed as provided by the laws of California, and they pray leave to refer to such Articles of Consolidation and Amalgamation material to any purposes of this suit, and to the laws of California authorizing the same, and to the laws of California affecting the corporations aforesaid, or any of them, and to the amendatory Articles of the Southern Pacific Railroad Company filed.

And defendants furthermore allege that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California, on that behalf, the said Southern Pacific Railroad, as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to, and the Southern Pacific Branch Railroad Company, a corporation, organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its Articles of Incorporation, of constructing, owning, and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company, and entered into Articles of Consolidation and Amalgamation, which said Articles were duly signed, published and filed, as required by the laws of California, and they

pray leave to refer to such Articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation were real and not pretended; they deny that said Articles of Incorporation and Consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such Articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the Articles of Incorporation of the consolidated companies, they pray leave to refer to the same if in anywise material to this suit; and they pray leave to refer to the laws of the State of California, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State. The defendants furthermore deny that by said Articles of Incorporation and Amalgamation the defendant, Southern Pacific Railroad Company, surrendered to the United States all or any of the grants, rights, franchises or privileges

theretofore conferred upon it, or upon the Southern Pacific Railroad Company as it existed prior thereto,

X.

Answering paragraph VIII of the plaintiff's complaint, the defendants deny each and all thereof, and allege that on or about the 18th day of December, 1874, under and by virtue of the law of the State of California, on that behalf, the said Southern Pacific Railroad Company, as it existed after the said consolidation and amalgamation of 1873, and composed of the consolidating and amalgamating companies above referred to, did consolidate and amalgamate its capital stock, its property and assets and franchises, under the name and style of the Southern Pacific Railroad Company, and entered into Articles of Consolidation and Amalgamation; and that said Articles were duly signed, published, and filed as required by the laws of the State of California. They pray leave to refer to said Articles, so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such Articles of Consolidation and Amalgamation, were real and not pretended; they deny that said Articles of Incorporation and Consolidation were entered into without any authority from the United States or from the Congress of the United States; and they deny that by such Articles of

Agreement of Consolidation and Amalgamation, or by any such consolidation and amalgamation a new capital stock or a new or different corporation was created or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations, and not a newly created corporation. As to the contents, purport and effect of the Articles of Incorporation of the consolidated companies, they pray leave to refer to the same, if anywise material to this suit; and they pray leave to refer to the laws of the State of California, as existing prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of the State; the defendants furthermore deny that by said Articles of Incorporation and Amalgamation the defendant, the Southern Pacific Railroad Company surrendered to the United States all or any of the grants, rights, franchises or privileges theretofore conferred upon it, or upon the Southern Pacific Railroad Company as it existed prior thereto.

These defendants deny that such Articles of Consolidation and Amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, or were unauthorized or prohibited by the laws of the United States, or were entered into without authority from the Congress of the United

States, or without other competent authority; but on the contrary, they allege that the consolidation and amalgamation of said railroad companies were made in conformity with the laws of the State of California, whose action in that behalf was fully authorized and recognized by the Congress of the United States, and that such amalgamation and consolidation were and are in all respects valid.

### XI.

Answering Paragraph IX of plaintiff's complaint, the defendants deny the same and all thereof, and allege that in due course of law, and with proper authority, the Interior Department has issued and caused to be issued to the defendant, the Southern Pacific Railroad Company, patents of the United States in due form, for the certain tracts of land described in Plaintiff's Exhibit "A" attached to plaintiff's bill of complaint. They aver that such patents were real and not pretended, and were duly recorded in the General Land Office before they were delivered to said Company, and still remain so of record, and did convey and confirm to said Company a portion of the lands in suit herein, and since the delivery thereof the same have been recorded in the counties of Los Angeles and San Bernardino and Kern in the State of California.

### XII.

Answering paragraph X of the plaintiff's bill of

complaint, the defendants allege that the defendants D. O. Mills and Gerrit L. Lansing, trustees, claim to be and are trustees of certain mortgage to secure the payment of certain negotiable bonds, and claim that such bonds have been sold, issued and delivered to various persons for value, and without notice of any claims or ownership of the complainant to said lands, and they deny that such claims are unfounded, or are not based upon any legal or equitable right to such lands, but on the contrary allege that such claims are well founded and valid.

And these defendants further answering say that heretofore, and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant D. O. Mills and one Lloyd Tevis a mortgage bearing date of that day, and covering all the lands mentioned in the plaintiff's complaint here, to secure the proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Defendant's Exhibit "B," and pray to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said first day of April, 1875, and October 1st, 1888, duly issued thereunder and sold to persons who purchased the same in good faith and for full and valuable consideration, and that of such bonds there are now out-

standing in the hands of bona fide holders thereof, for value, bonds to the amount of their par value of \$31,293,500. That said Gerrit L. Lansing named as defendant in this suit has been duly substituted a mortgage trustee thereunder, in place and stead of said Lloyd Tevis, named as trustee in said original mortgage.

### XIII.

The defendants further allege that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit, the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and one of the defendants named in said bill, a further mortgage or deed of trust, covering all the lands mentioned in plaintiff's complaint herein, bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked exhibit "C," and prayed to be taken as a part of this answer. That negotiable mortgage bonds, to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit, duly issued thereunder and sold to persons



who purchased the same in good faith and for full value and valuable consideration, and that of such bonds so issued, prior to the institution of this suit, bonds to the amount of upwards of \$10,497,000 are now outstanding in the hands of bona fide holders thereof for value.

#### XIV.

Answering paragraph XI of plaintiff's bill of complaint, these defendants deny that they are unlawfully removing from any of the lands in suit, or from said lands, any wood or timber or minerals or other valuable deposits, or are unlawfully threatening to chop down other trees or any trees on said lands, or unlawfully to remove other minerals or valuable deposits thereon, and deny that unless enjoined will do so in any manner or at all, or to the great or irreparable injury of the plaintiff.

These defendants further aver that they and each of them are not residents or inhabitants of the Southern District of California, and that none of the defendants in this action are residents of or inhabitants of the Southern District of California. On the contrary, the defendant the Southern Pacific Railroad Company is a resident and inhabitant of the Northern District of California; the defendant D. O. Mills is a resident and inhabitant of the State of New York and of the Southern District of New

York; the defendant Gerrit L. Lansing is a resident and inhabitant of the Northern District of California.

These defendants and each of them herewith re-iterate their pleas to the jurisdiction of this Court heretofore entered and against said jurisdiction.

And these defendants deny all and all manner of matter, cause or thing in the plaintiff's bill of complaint contained, material or necessary for these defendants to make answer to, and not herein well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of any of the defendants. All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court may direct; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor for Defendants herein Answering.

WM. F. HERRIN and

WM. SINGER, Jr.,

Of Counsel.

[Endorsed]: No. 600. U. S. Circuit Court, Ninth Circuit, So. Dist. of Cal. United States of America, Plaintiff, vs. Southern Pacific R. R. Co., et al., Defendants. Answer.

Service of the within Answer is hereby admitted  
this 10 day of January, A. D. 1895.

JOSEPH H. CALL,

Attorney for Compl.

Filed Jan. 10, 1895. Wm. M. Van Dyke, Clerk.

*In the United States Circuit Court, Southern Dis-  
trict of California, Ninth Circuit.*

No. 600.

UNITED STATES OF AMERICA,

Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
and Others,

Defendants.

**Replication in Case No. 600.**

Replication of the United States to the Answer  
of Defendants.

This repliant, saving and reserving to himself all  
and all manner of advantage of exception to the  
manifold insufficiencies of the said answer, for  
replication thereunto, saith that he will aver and  
prove his said bill to be true, certain and sufficient  
in the law to be answered unto; and that the said  
answer of the said defendant is uncertain, untrue  
and insufficient to be replied unto by this repliant  
without this, that any other matter or thing what-

soever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,  
Special Asst. U. S. Atty. and of Counsel for Complainant.

JOSEPH H. CALL,  
Special Asst. U. S. Atty. and of Counsel for Complainants.

[Endorsed]: No. 600. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants.

Due service hereof admitted by copy this 23 Jan., 1895.

JOSEPH D. REDDING,  
Solicitor for said Defendant.  
Filed Jan. 23, 1895. Wm. M. Van Dyke, Clerk.  
Joseph H. Call, Special Asst. U. S. Atty.

*In the United States Circuit Court, Ninth Circuit,  
Southern District of California.*

No. 600.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COM-  
PANY, D. O. MILLS and HOMER S. KING,  
Trustees, and the CENTRAL TRUST COM-  
PANY OF NEW YORK,

Defendants.

**Decree Filed June 6, 1898, in Case No. 600.**

This cause coming on for final decree this 6th day of June, A. D. 1898, in open court and the United States having appeared by Mr. Joseph H. Call, Special Assistant United States Attorney, and the defendants having appeared by Mr. Wm. F. Herrin and Mr. Wm. Singer, Jr., their counsel and attorney, respectively; and the testimony having been taken and the cause duly argued and submitted; and by consent of parties and order of Court, Homer S. King, trustee, having been substituted for Gerrit L. Lansing, trustee, lately deceased, and the Court being now fully advised in the premises, it is by the Court now ordered, adjudged and de-

creed that the United States of America are the owners by title in fee simple, absolute, unencumbered, of all the lands hereinafter described and all patents heretofore issued by the United States to the defendant Southern Pacific Railroad Company (a corporation), to or for any of said lands, are hereby decreed to be null and void and are hereby vacated, and the defendants Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees of a certain mortgage or deed of trust dated April 1, 1875, executed by said Southern Pacific Railroad Company, and the Central Trust Company of New York, trustee of a certain mortgage or deed of trust executed by said Southern Pacific Railroad Company, dated August 25, 1888, be and they each hereby are forever enjoined and restrained from having or claiming any right, title, interest or lien in or to any of said lands and the title of the United States to said lands is hereby quieted; said lands being described as follows, to wit:

All the sections and parts of sections of land in the State of California, surveyed and unsurveyed, designated by odd numbers, within thirty miles on each side of the line of route of the Atlantic and Pacific Railroad Company from the Colorado River to the Pacific Ocean at or near San Buena Ventura, California, and coterminous with said line of route,

as designated and established by the maps filed by said Atlantic and Pacific Railroad Company in the General Land Office and in the Department of the Interior in the year one thousand eight hundred and seventy-two, copies of which were introduced in evidence in this cause and are now on file herein, to which maps, designating said line of route, reference is hereby made; excepting, however, from the lands so described, and from the operation of this decree, the following specific tracts of land, which are not embraced by this suit, to wit:

All the sections of land, surveyed and unsurveyed, designated by odd numbers, in townships three (3) and four (4) north; ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west, also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included.

The fractional N.E.  $\frac{1}{4}$  of Sec. 5, T. 1 S., R. 6 W.

The N.W.  $\frac{1}{4}$  of Sec. 9, T. 1 S., R. 6 W.

The N.  $\frac{1}{2}$  of Sec. 21, T. 1 S., R. 7 W.

The S.  $\frac{1}{2}$  of Sec. 21, T. 1 S., R. 7 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 1, T. 1 S., R. 8 W.

The W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$ ; W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of Sec. 1, T. 1 S., R. 8 W.

All of Sec. 11, T. 1 S., R. 8 W.

All of fractional Sec. 15, T. 1 S., R. 8 W.

Lots 1 and 2 of Sec. 21, T. 1 S., R. 8 W.

The N.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 23, T. 1 S., R. 8 W.

Lots 1, 2, 3 and 4 of Sec. 25, T. 1 S., R. 8 W.

The S.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 27, T. 1 S., R. 8 W.

Lots 6 and 7 of Sec. 33, T. 1 S., R. 9 W.

Lot 5 of Sec. 33, T. 1 S., R. 9 W.

The S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and Lots 1, 2, 3 and 4 of Sec. 35, T. 1 S., R. 9 W.

Lot 1 of Sec. 1, T. 1 S., R. 11 W.

Lot 1 of N.W.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 11 W.

Lot 5 of S.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 11 W.

Lot 6 of S.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 11 W.

Lots 7 and 8 of N.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 11 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and Lot 6 of Sec. 13, T. 1 S., R. 11 W.

The W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$ ; N.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and Lots 1, 2, 3, 4 and 5 of Sec. 13, T. 1 S., R. 11 W.

Lot 1 of Sec. 3, T. 1 S., R. 12 W.



Lot 5 of Sec. 3, T. 1 S., R. 12 W.

Lots 2 and 3 of Sec. 5, T. 1 S., R. 12 W.

The N.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 12 W.

N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 12 W.

Lots 3 and 4 of Sec. 7, T. 1 S., R. 12 W.

Lots 1 and 2 of Sec. 11, T. 1 S., R. 12 W.

The N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 11, T. 1 S., R. 12 W.

The S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 11, T. 1 S., R. 12 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 13, T. 1 S., R. 12 W.

The N.E.  $\frac{1}{4}$  of Sec. 15, T. 1 S., R. 12 W.

The S.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and N.E.  $\frac{1}{4}$  of Sec. 17, T. 1 S., R. 12 W.

The N.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 17, T. 1 S., R. 12 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 19, T. 1 S., R. 12 W.

The N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 19, T. 1 S., R. 12 W.

The N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of Sec. 29, T. 1 S., R. 12 W.

S.E.  $\frac{1}{4}$  of Sec. 29, T. 1 S., R. 12 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and N.W.  $\frac{1}{4}$  of Sec. 31, T. 1 S., R. 12 W.

Lot 1 of Sec. 11, T. 1 S., R. 13 W.

The N.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; S.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and Lots 1 and 4 of Sec. 13, T. 1 S., R. 13 W.

Lots 3 and 4 of Sec. 25, T. 1 S., R. 13 W.

Lot 10 of Sec. 3, T. 1 S., R. 14 W.

The S.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 3, T. 1 S., R. 14 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and Lots 1 and 2 of Sec. 3, T. 1 S., R. 14 W.

The S.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and Lots 3, 4, 5 and 7 of Sec. 3, T. 1 S., R. 14 W.

The E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$ ; S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and S.E.  $\frac{1}{4}$  of Sec. 5, T. 1 S., R. 14 W.

The N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$ ; W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and N.W.  $\frac{1}{4}$  of Sec. 5, T. 1 S., R. 14 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 14 W.

The W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 14 W.

The N.W.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 14 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and Lot 3 of Sec. 7, T. 1 S., R. 14 W.

The S.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 7, T. 1 S., R. 14 W.

N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 11, T. 1 S., R. 14 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 11, T. 1 S., R. 14 W.

The W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 11, T. 1 S., R. 14 W.

Lots 1, 2, 3 and 4 of Sec. 23, T. 1 S., R. 14 W.

N.W.  $\frac{1}{4}$  of Sec. 25, T. 1 S., R. 14 W.

Lots 1-S.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$ ; S.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 1, T. 1 S., R. 15 W.

The E.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$ ; S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  and Lot 2 of Sec. 1, T. 1 S., R. 15 W.

The S.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 1, T. 1 S., R. 15 W.

The S.W. 1/4 of S.W. 1/4 of Sec. 1, T. 1 S., R. 15 W.

The N.W. 1/4 of S.W. 1/4 of Sec. 1, T. 1 S., R. 15 W.

The W. 1/2 of S.E. 1/4 and W. 1/2 of N.E. 1/4 of Sec. 11, T. 1 S., R. 15 W.

The N.E. 1/4 of S.E. 1/4 and S.E. 1/4 of N.E. 1/4 of Sec. 11, T. 1 S., R. 15 W.

The N.E. 1/4 of N.E. 1/4 of Sec. 11, T. 1 S., R. 15 W.

S. 1/2 of N.W. 1/4 and S.W. 1/4 of Sec. 11, T. 1 S., R. 15 W.

The S.E. 1/4 of S.E. 1/4 of Sec. 11, T. 1 S., R. 15 W.

Lot 1 of Sec. 3, T. 2 S., R. 11 W.

The N.E. 1/4 of S.E. 1/4 & S. 1/2 of S.E. 1/4 of Sec. 9, T. 2 S., R. 11 W.

Lots 1 & 2 of Sec. 3, T. 2 S., R. 13 W.

Frac. of Lot 1 of Sec. 5, T. 2 S., R. 13 W.

Frac. of Lot 1 of Sec. 5, T. 2 S., R. 13 W.

The S. 1/2 of N.E. 1/4 of Sec. 11, T. 2 S., R. 14 W.

The S.W. 1/4 of Sec. 13, T. 2 S., R. 14 W.

All of factional Sec. 17, T. 2 S., R. 14 W.

The S.W. 1/4 of N.E. 1/4; W. 1/2 of S.E. 1/4 and W. 1/2 of Sec. 11, T. 1 N., R. 4 W.

The frac. S.W. 1/4 of Sec. 13, T. 1 N., R. 4 W.

The frac. N.W. 1/4 of Sec. 27, T. 1 N., R. 5 W.

Lots 2 and 3 of N.E. 1/4 of Sec. 27, T. 1 N., R. 5 W.

The frac'l S.E.  $1/4$  of Sec. 27, T. 1 N., R. 5 W.

The S.W.  $1/4$  of Sec. 27, T. 1 N., R. 5 W.

The W.  $1/2$  of S.E.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The W.  $1/2$  of Sec. 11, T. 1 N., R. 6 W.

The S.  $1/2$  of S.E.  $1/4$  of Sec. 13, T. 1 N., R. 6 W.

The N.  $1/2$  of S.E.  $1/4$  of Sec. 13, T. 1 N., R. 6 W.

The S.W.  $1/4$  of Sec. 13, T. 1 N., R. 6 W.

The N.E.  $1/4$  of Sec. 15 T. 1 N., R. 6 W.

The N.W.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The E.  $1/2$  of S.E.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The W.  $1/2$  of S.W.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The E.  $1/2$  of S.W.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The W.  $1/2$  of S.W.  $1/4$  of Sec. 15, T. 1 N., R. 6 W.

The E.  $1/2$  of N.E.  $1/4$  of Sec. 17, T. 1 N., R. 6 W.

The E.  $1/2$  of N.E.  $1/4$  and W.  $1/2$  of S.E.  $1/4$  of Sec. 23, T. 1 N., R. 6 W.

The S. W.  $1/4$  of N.E.  $1/4$ ; S.E.  $1/4$  of N.W.  $1/4$  and S.W.  $1/4$  of Sec. 23, T. 1 N., R. 6 W.

The W.  $1/2$  of N.W.  $1/4$  of Sec. 23, T. 1 N., R. 6 W.

The E.  $1/2$  of S.E.  $1/4$  of Sec. 23, T. 1 N., R. 6 W.

The N.W.  $1/4$  of N.W.  $1/4$ ; N.E.  $1/4$  of N.E.  $1/4$ ; S.  $1/2$  of N.E.  $1/4$ ; S.  $1/2$  of N.W.  $1/4$  and S.  $1/2$  of Sec. 25, T. 1 N., R. 6 W.

The N.W.  $1/4$  of N.E.  $1/4$  and N.E.  $1/4$  of N.W.  $1/4$  of Sec. 25, T. 1 N., R. 6 W.

The N.W.  $1/4$  of N.E.  $1/4$  of Sec. 27, T. 1 N., R. 6 W.

The E.  $1/2$  of N.E.  $1/4$  of Sec. 27, T. 1 N., R. 6 W.

The S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and N.W.  $\frac{1}{4}$  of Sec. 27, T. 1 N., R. 6 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 27, T. 1 N., R. 6 W.

The S.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 27, T. 1 N., R. 6 W.

The E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 27, T. 1 N., R. 6 W.

The W.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 27, T. 1 N., R. 6 W.

The W.  $\frac{1}{2}$  of Sec. 29, T. 1 N., R. 6 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 29, T. 1 N., R. 6 W.

The W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 29, T. 1 N., R. 6 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The N.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The frac. N.W.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The S.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The N.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 6 W.

The N.E.  $\frac{1}{4}$  of Sec. 35, T. 1 N., R. 6.

The E.  $\frac{1}{2}$  of Sec. 35, T. 1 N., R. 6.

The N.W.  $\frac{1}{4}$  of Sec. 35, T. 1 N., R. 6 W.

The S.W.  $\frac{1}{4}$  of Sec. 35, T. 1 N., R. 6 W.

Lots 1 and 2 of Sec. 21, T. 1 N., R. 7 W.

Lots 3 and 4 of Sec. 21, T. 1 N., R. 7 W.

The frac. E.  $\frac{1}{2}$  of Sec. 27, T. 1 N., R. 7 W.

The N.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  S.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ , and Lots 1, 2, 3 & 4 of Sec. 35, T. 1 N., R. 7 W.

The N.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 8 W.

The S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 8 W.

The S.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 8 W.

The N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 8 W.

The W.  $\frac{1}{2}$  of S. W.  $\frac{1}{4}$  of Sec. 13 T. 1 N., R. 8 W.

The S. E.  $\frac{1}{4}$  of Sec. 19, T. 1 N., R. 8 W.

The E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and S.E.  $\frac{1}{4}$  of Sec. 21, T. 1 N., R. 8 W.

The S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 21, T. 1 N., R. 8 W.

The N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 21, T. 1 N., R. 8 W.

The W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 23, T. 1 N., R. 8 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 23, T. 1 N., R. 8 W.  
Lots 1, 2, & 3, of Sec. 25, T. 1 N., R. 8 W.

The S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 15, T. 1 N., R. 9 W.

The S.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 19, T. 1 N., R. 9 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and S.W.  $\frac{1}{4}$  of Sec. 21, T. 1 N., R. 9 W.

S.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 21, T. 1 N., R. 9 W.

The S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 15, T. 1 N., R. 10 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and frac. S.E.  $\frac{1}{4}$  of Sec. 19, T. 1 N., R. 10 W.

N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  and Lot 3 of Sec. 21, T. 1 N., R. 10 W.

The N.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  and Lot 4 of Sec. 21, T. 1 N., R. 10 W.

The N.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 25, T. 1 N., R. 10 W.

The E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$ ; S.E.  $\frac{1}{4}$  and Lot 2 of Sec. 7, T. 1 N., R. 11 W.

N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 11 W.

The E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  of Sec. 13, T. 1 N., R. 11 W.

All frac. Sec. 15, T. 1 N., R. 15 W.

The S.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 17, T. 1 N., R. 11 W.

The S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 17, T. 1 N., R. 11 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and Lots 3 and 4 of Sec. 17, T. 1 N., R. 11 W.

The N.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  and Lots 3 and 4 of Sec. 23, T. 1 N., R. 11 W.

The S.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and Lot 1 of Sec. 23, T. 1 N., R. 11 W.

Lots 1 and 2 of N.E.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 12 W.

Lot 3 of N.W.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 12 W.

Lot 4 of N.W.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 12 W.

Lot 5 of Sec. 3, T. 1 N., R. 12 W.

The N.E.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 12 W.

Lots 1, 8 and 9 of Sec. 5, T. 1 N., R. 12 W.

Lot 2 of Sec. 5, T. 1 N., R. 12 W.

Lots 3, 4, 5, 6, & 7 of Sec. 5, T. 1 N., R. 12 W.

Lots 1 and 2 of Sec. 11, T. 1 N., R. 12 W.

Lots 3, 4, and 5 of Sec. 11, T. 1 N., R. 12 W.

Lot 4 of Sec. 13, T. 1 N., R. 12 W.

Lots 1 and 2 of Sec. 13, T. 1 N., R. 12 W.

Lots 1, 2 and 3, of Sec. 3, T. 1 N., R. 14 W.

S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$ ; S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$ ; and  
N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 14 W.

The S.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and Lots 4 and 5 of Sec.  
3, T. 1 N., R. 14 W.

The S.E.  $\frac{1}{4}$  of Sec. 3, T. 1 N., R. 14 W.

The W.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and S.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$   
of Sec. 3, T. 1 N., R. 14 W.

Lots 1 and 2 of Sec. 5, T. 1 N., R. 14 W.

The frac. N.  $\frac{1}{2}$  of Sec. 9, T. 1 N., R. 14 W.

The frac. S.  $\frac{1}{2}$  of Sec. 9, T. 1 N., R. 14 W.

The W.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$  and Lots 1, 2, 3, & 4 of Sec.  
11, T. 1 N., R. 14 W.

Lot 1 of Sec. 15, T. 1 N., R. 14 W.

Lots 1, 2, 3, and 4 of Sec. 27, T. 1 N., R. 14 W.

The frac. S.W.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 14 W.

The frac. S.E.  $\frac{1}{4}$  of Sec. 31, T. 1 N., R. 14 W.

The S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and Lots 1 & 2 of Sec. 33,  
T. 1 N., R. 14 W.



The S.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and Lots 3 and 4 of Sec. 33,  
T. 1 N., R. 14 W.

The E.  $\frac{1}{2}$  of Sec. 35, T. 1 N., R. 14 W.

The N.W.  $\frac{1}{4}$  of Sec. 3, T. 3 N., R. 19 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 5, T. 3 N., R. 19 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$ ; S.W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of  
Sec. 15, T. 4 N., R. 19 W.

The S.  $\frac{1}{2}$  of S. E.  $\frac{1}{4}$  of Sec. 15, T. 4 N., R. 19 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of  
Sec. 17, T. 4 N., R. 19 W.

The N.  $\frac{1}{2}$  and S.W.  $\frac{1}{4}$  of Sec. 21, T. 4 N., R. 19  
W.

The S.E.  $\frac{1}{4}$  of Sec. 21, T. 4 N., R. 19 W.

The N.W.  $\frac{1}{4}$  of Sec. 23, T. 4 N., R. 19 W.

The S.W.  $\frac{1}{4}$  of Sec. 23, T. 4 N., R. 19 W.

The N.W.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 25, T. 4 N., R.  
19 W.

The N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ ; E.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and  
S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 25, T. 4 N., R. 19 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 25, T. 4 N., R. 19 W.

The N.E.  $\frac{1}{4}$  of Sec. 27, T. 4 N., R. 19 W.

The N.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$   
of Sec. 27, T. 4 N., R. 19 W.

The S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  of Sec. 27, T. 4 N., R.  
19 W.

The E.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and N.E.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$   
of Sec. 29, T. 4 N., R. 19 W.

The S.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  of Sec. 22, T. 4 N., R. 19 W.

Lots 2, 3 and 4 of Sec. 33, T. 4 N., R. 19 W.

The E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  of Sec. 33, T. 4 N., R. 19 W.

The N.  $\frac{1}{2}$  of Sec. 7, T. 7 N., R. 13 W.

All of frac. Sec. 1, T. 7 N., R. 14 W.

All of frac. Sec. 3, T. 7 N., R. 14 W.

All of frac. Sec. 5, T. 7 N., R. 14 W.

The W.  $\frac{1}{2}$  of Sec. 7, T. 7 N., R. 14 W.

The N.  $\frac{1}{2}$  of Sec. 9, T. 7 N., R. 14 W.

The N.  $\frac{1}{2}$  of Sec. 11, T. 7 N., R. 14 W.

All of Sec. 1, T. 7 N., R. 15 W.

The N.  $\frac{1}{2}$  of Sec. 3, T. 7 N., R. 15 W.

The N.W.  $\frac{1}{4}$  and Lot 2 of Sec. 5, T. 7 N., R. 15 W.

San Bernardino Base and Meridian.

And, excepting, also, the following described lands which it is adjudged were, prior to the commencement of this suit, sold by the defendant Southern Pacific Railroad Company to third persons, who purchased the same in good faith and for value, and as to which lands it is adjudged that the United States take nothing, which lands are described as follows, to wit:

The frac. N.  $\frac{1}{2}$  of Sec. 7, T. 7 N., R. 18 W.

The N.  $\frac{1}{2}$  of Sec. 9, T. 7 N., R. 18 W.

The N.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 14 W.

The N.W.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 14 W.

The N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 14 W.

The S.W.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 14 W.

The N.E.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 14 W.

The N.W.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 14 W.

The S.E.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 14 W.

The S.W.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 14 W.

The N.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  of Sec. 5, T. 8 N., R. 14 W.

The N.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$  of Sec. 5, T. 8 N., R. 14 W.

The N.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$ ; S.E.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of Sec. 11, T. 8 N., R. 14 W.

The N.E.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 16 W.

The S.W.  $\frac{1}{4}$  of Sec. 1, T. 8 N., R. 16 W.

The N.E.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 16 W.

The SW,  $\frac{1}{4}$  of Sec: 3, T: 8 N , R: 16 W:

The N.E.  $\frac{1}{4}$  of Sec. 3, T. 8 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 5, T. 8 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 5, T. 8 N., R. 16 W.

The S.W.  $\frac{1}{4}$  of Sec. 5, T. 8 N., R. 16 W.

All of Sec. 11, T. 8 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 13, T. 8 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 13, T. 8 N., R. 16 W.

The N.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and S.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 13, T. 8 N., R. 16 W.

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All of Sec. 15, T. 8 N., R. 16 W.

The N.E.  $\frac{1}{4}$  of Sec. 23, T. 8 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 23, T. 8 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Lots, 1, 2, 3, & 4 of Sec. 9, T. 8 N.,  
R. 17 W.

Lot 1 of Sec. 27, T. 8 N., R. 17 W.

All of frac. Sec. 29, T. 8 N., R. 17, W.

All of frac. Sec. 31, T. 8 N., R. 17 W.

All of Sec. 33, T. 8 N., R. 17 W.

All of frac. Sec. 35, T. 8 N., R. 17 W.

The S.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  and Lots 1, 2 & 3 of Sec.  
13, T. 8 N., R. 18 W.

The N.E.  $\frac{1}{4}$  of Sec. 15, T. 8 N., R. 18 W.

The N.W.  $\frac{1}{4}$  of Sec. 15, T. 8 N., R. 18 W.

The S.E.  $\frac{1}{4}$  of Sec. 15, T. 8 N., R. 18 W.

The S.W.  $\frac{1}{4}$  of Sec. 15, T. 8 N., R. 18 W.

The SE.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and W.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$   
of Sec. 17, T. 8 N., R. 18 W.

The E.  $\frac{1}{2}$  of Sec. 21, T. 8 N., R. 18 W.

The S.W.  $\frac{1}{4}$  of Sec. 21, T. 8 N., R. 18 W.

All of Sec. 23, T. 8 N., R. 18 W.

The N.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$ ; S.W.  $\frac{1}{4}$  and N.  $\frac{1}{2}$  of  
Sec. 7, T. 9 N., R. 13 W.

The W.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$  of Sec. 9, T. 9 N., R. 13 W.

The N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ ; W.  $\frac{1}{2}$  of N.E.  $\frac{1}{4}$  and  
W.  $\frac{1}{2}$  of Sec. 17, T. 9 N., R. 13 W.

All of Sec. 19, T. 9 N., R. 13 W.

The N.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$ ; W.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$   
and N.W.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 31, T. 9 N., R.  
13 W.

The frac. N.  $\frac{1}{2}$  of Sec. 19, T. 9 N., R. 14 W.

The S.E.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 14 W.

The S.W.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 14 W.

E.  $\frac{1}{2}$  of Sec. 21, T. 9 N., R. 14 W.

The W.  $\frac{1}{2}$  of Sec. 21, T. 9 N., R. 14 W.

All of Sec. 23, T. 9 N., R. 14 W.

All of Sec. 25, T. 9 N., R. 14 W.

The N.  $\frac{1}{2}$  of Sec. 27, T. 9 N., R. 14 W.

The  $\frac{1}{2}$  of Sec. 29, T. 9 N., R. 14 W.

The S.  $\frac{1}{2}$  of Sec. 29, T. 9 N., R. 14 W.

The E.  $\frac{1}{2}$  of Sec. 31, T. 9 N., R. 14 W.

The N.W.  $\frac{1}{4}$  of Sec. 31, T. 9 N., R. 14 W.

The S.W.  $\frac{1}{4}$  of Sec. 31, T. 9 N., R. 14 W.

The N.  $\frac{1}{2}$  of Sec. 33, T. 9 N., R. 14 W.

The S.  $\frac{1}{2}$  of Sec. 33, T. 9 N., R. 14 W.

All of Sec. 35, T. 9 N., R. 14 W.

The N.E.  $\frac{1}{4}$  of Sec. 17, T. 9 N., R. 15 W.

The S.E.  $\frac{1}{4}$  of Sec. 17, T. 9 N., R. 15 W.

The N.W.  $\frac{1}{4}$  of Sec. 17, T. 9 N., R. 15 W.

The S.W.  $\frac{1}{4}$  of Sec. 17, T. 9 N., R. 15 W.

The N.E.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 15 W.

The N.W.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 15 W.

The S.E.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 15 W.

The S.W.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 15 W.

The S. E.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 15 W.

The S.W.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 15 W.

The N.  $\frac{1}{2}$  of Sec. 23, T. 9 N., R. 15 W.

The S.  $\frac{1}{2}$  of Sec. 23, T. 9 N., R. 15 W.

The N.E.  $\frac{1}{4}$  of Sec. 25, T. 9 N., R. 15 W.

The N.W.  $\frac{1}{4}$  of Sec. 25, T. 9 N., R. 15 W.

The S.E.  $\frac{1}{4}$  of Sec. 25, T. 9 N., R. 15 W.

The S.W.  $\frac{1}{4}$  of Sec. 25, T. 9 N., R. 15 W.

The N.  $\frac{1}{2}$  of Sec. 27, T. 9 N., R. 15 W.

The S.  $\frac{1}{2}$  of S.W.  $\frac{1}{4}$  and S.E.  $\frac{1}{4}$  of Sec. 27, T.  
9 N., R. 15 W.

The N.E.  $\frac{1}{4}$  of Sec. 35, T. 9 N., R. 15 W.

The N.  $\frac{1}{2}$  of N.W.  $\frac{1}{4}$  of Sec. 35, T. 9 N., R.  
15 W.

The N.E.  $\frac{1}{4}$  of Sec. 13, T. 9 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 13, T. 9 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 13, T. 9 N., R. 16 W.

The S.W.  $\frac{1}{4}$  of Sec. 13, T. 9 N., R. 16 W.

The N.E.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 16 W.

The N.W.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 16 W.

The S.W.  $\frac{1}{4}$  of Sec. 19, T. 9 N., R. 16 W.

The N.E.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 16 W.

The N. W.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 16 W.

The S.E.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 16 W.

The S.W.  $\frac{1}{4}$  of Sec. 21, T. 9 N., R. 16 W.

The N.  $\frac{1}{2}$  of Sec. 23, T. 9 N., R. 16 W.

The N.E. 1/4 of S.E. 1/4 of Sec. 23, T. 9 N., R. 16 W.

The N.E. 1/4 of Sec. 25, T. 9 N., R. 16 W.

The N.W. 1/4 of Sec. 25, T. 9 N., R. 16 W.

The S.E. 1/4 of Sec. 25, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 25, T. 9 N., R. 16 W.

The N. E. 1/4 of Sec. 27, T. 9 N., R. 16 W.

The N.W. 1/4 of Sec. 27, T. 9 N., R. 16 W.

The S.E. 1/4 of Sec. 27, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 27, T. 9 N., R. 16 W.

The N.W. 1/4 of Sec. 29, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 29, T. 9 N., R. 16 W.

The N.E. 1/4 of Sec. 29, T. 9 N., R. 16 W.

The S.E. 1/4 of Sec. 29, T. 9 N., R. 16 W.

The N.E 1/4 of Sec. 31, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 31, T. 9 N., R. 16 W.

The N.E. 1/4 of Sec. 33, T. 9 N., R. 16 W.

The N.W. 1/4 of Sec. 33, T. 9 N., R. 16 W.

The S.E. 1/4 of Sec. 33, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 33, T. 9 N., R. 16 W.

The N.E. 1/4 of Sec. 35, T. 9 N., R. 16 W.

The N.W. 1/4 of Sec. 35, T. 9 N., R. 16 W.

The S.E. 1/4 of Sec. 35, T. 9 N., R. 16 W.

The S.W. 1/4 of Sec. 35, T. 9 N., R. 16 W.

Lots 1, 2, 3, and 4 of Sec. 33, T. 9 N., R. 17 W.

San Bernardino Base and Meridian.

And it is further ordered, adjudged and decreed, that this decree shall not affect any right which the

United States may have to recover from the defendant Southern Pacific Railroad Company the proper government price for any of the aforesaid lands sold by the said company to third persons; nor shall it cancel or vacate any patent issued by the United States to the said Southern Pacific Railroad Company for lands sold by it to a bona fide purchaser.

It is further ordered, adjudged and decreed that this decree shall not in any wise affect any right of way which the defendant, Southern Pacific Railroad Company may have over, upon and across any of the lands described in this decree, to the extent of one hundred (100) feet in width on each side of its railroad, including all necessary ground for station buildings, work-shops, depots, machine-shops, switches, sidetracks, turntables, and water stations, now properly appropriated and used by the said company for said purposes.

And it is further ordered, adjudged and decreed, that the United States have and recover their costs of this suit taxed at one hundred and eighty and 50/100 (180 50/100) dollars.

ROSS,  
Circuit Judge.

Decree entered and recorded June 6th, 1898.

WM. M. VAN DYKE,  
Clerk.



[Endorsed]: No. 600. United States, vs. Southern Pacific R. R. Co., et al. Decree. Filed Jun. 6, 1898. Wm. M. Van Dyke, Clerk. Joseph H. Call, Spl. U. S. Atty.

No. 600.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS, and HOMER S. KING, Trustees; and the CENTRAL TRUST COMPANY OF NEW YORK,

Defendants.

**Decree Filed July 2, 1902, in Case No. 600.**

This cause coming on for final decree this 2nd day of July, 1902, in open court, in pursuance to a mandate issued by the Supreme Court of the United States, on the 19th day of March, 1902, and the United States appearing by Mr. Joseph H. Call, special assistant United States attorney, and the defendants appearing by Mr. William F. Herrin and Mr. William Singer, Jr., their counsel and attorney,

respectively; and the Court being duly advised in the premises, it is by the Court now

Ordered, adjudged and decreed, that the United States is the owner by title in fee simple, absolute and unincumbered, of an equal undivided moiety of the following described lands, and defendants, Southern Pacific Railroad Company, and D. O. Mills, and Homer S. King, as trustees, and the Central Trust Company of New York as trustee, and their servants, agents and successors in interest hereby are forever enjoined and restrained from having or claiming to have any title, interest, or estate adverse to the United States in and to said moiety in said lands of which the United States is the owner, as aforesaid, to wit: In all alternate sections of land, designated by odd numbers, within the primary or place limits of the grant to the Atlantic and Pacific Railroad Company, within the State of California, made by the act of Congress approved July 27, 1866, as fixed by map of definite location of said company, filed in the office of the Commissioner of the General Land Office in the year one thousand eight hundred and seventy-two, so far as those limits conflict with the primary or place limits of the grant to the Southern Pacific Railroad Company made by said act of Congress of July 27, 1866, and acts amendatory thereof, as adjusted to the line of road shown upon

the maps filed in the Interior Department on January 7, 1885, and accepted by the Secretary of the Interior on September 8, 1897; excepting therefrom all such sections and parts of sections of land designated by odd numbers as fall within the following described townships and parts of townships to wit: townships three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), and nineteen (19), west; also townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included, San Bernardino base and meridian, California, as to which excepted lands no relief is sought by this bill; and it is further

Ordered, adjudged and decreed, that as to all other lands embraced by the bill, that the bill be, and hereby is, dismissed without prejudice to any further suit or action, and it is further

Ordered, adjudged and decreed, that the respective parties plaintiff and defendant pay their own costs.  
July 2d, 1902.

ROSS,  
Circuit Judge.

Decree entered and recorded July 2d, 1902.

WM. M. VAN DYKE,  
Clerk.

[Endorsed]: No. 600. U. S. Circuit Court, 9th Circuit, Southern District of Cal. United States of America vs. Southern Pacific Railroad Co., et al. Final Decree. Filed Jul. 2, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., N. E. Corner Second and Mission Streets, San Francisco, Cal., Atty. for ———.

**Clerk's Certificate to Judgment-Roll in Case No. 600.**

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify the foregoing 64 typewritten pages numbered from 1 to 64, both numbers inclusive, to be a full, true and correct copy of the following papers of record in the cause entitled The United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., No. 600, viz.: Bill of complaint, filed May 14th, 1894; answer to bill of complaint, filed January 10th, 1895; replication, filed January 23d, 1895; decree, filed June

6th, 1898, and final decree pursuant to mandate of the Supreme Court of the United States, filed July 2d, 1902, as the same appear on file and of record in my office.

Attest my hand and the seal af said Circuit Court, this 30th day of December, 1905.

[Seal]

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: Filed May 24, 1906. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

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*United States Circuit Court, Ninth Circuit, Southern  
District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY

et al.,

Defendants and Appellants.

**Petition for Appeal.**

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees,

and Central Trust Company of New York as trustee, conceiving themselves aggrieved by the decree made and entered herein on March 18th, 1907, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors, filed herewith.

The said defendants pray that their appeal be allowed; and that upon this Court's approval of a good and sufficient bond to be given by them (these defendants), all proceedings in this cause, and upon the said decree, be stayed, pending this appeal.

Dated May ———, 1907.

WM. SINGER, JR.,

Attorney for the Defendants.

WM. F. HERRIN,

Counsel for the Defendants.

### **Order Allowing Appeal.**

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond, approved by this Court, in the sum of \$500, conditioned that the defendants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a true copy of the record, this petition and order, the assignment of errors filed therewith, and of all other papers and proceedings in the case, be sent to the said United States Circuit

Court of Appeals, under the seal of this Court and the hand of the Clerk thereof.

So ordered, on May 17th, 1907.

ROSS,

Circuit Judge.

[Endorsed]: No. 1196. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Petition and Order Granting Appeal of Defendants. Filed May 17, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Attorney for Defendants. Room 842, Flood Building, San Francisco.

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*United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants and Appellants.

**Assignment of Errors.**

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees,

Central Trust Company of New York as trustee, by their undersigned attorney and counsel, in connection with their petition and appeal herein, say that the decree rendered and entered by the said Court on March 18th, 1907, in the above-entitled case No. 1196, is erroneous and against their just rights in the following particulars:

1st. The Court erred in adjudging or decreeing that complainant is owner, by title absolute and in fee or at all, of the lands described in the said decree, or any part thereof; and herein

(a) The Court erred in adjudging or decreeing that these defendants have not, nor has either of them, any right, title, estate or interest in, or lien upon, the said lands; and

(b) The Court erred in ordering these defendants, or any of them, enjoined or restrained from asserting or claiming any right, title, estate or interest in, or lien upon, the said lands, adverse to complainant.

2d. The Court erred in decreeing or ordering cancellation or annulment of the patent issued by the United States unto the defendant Southern Pacific Railroad Company, for said lands.

3d. The Court erred in ordering that complainant have and recover from the defendant Southern Pacific Railroad Company, its costs herein.

4th. The Court erred in not deciding and decreeing that



(a) The patent from the United States unto defendant Southern Pacific Railroad Company, for the lands described in the decree, was lawfully issued, and is valid; and

(b) The defendants D. O. Mills and Homer S. King as trustees, are bona fide purchasers of the said lands; and

(c) The defendant Central Trust Company of New York as trustee, is a bona fide purchaser of the said land, subject to the mortgage of April 1st, 1875, by Southern Pacific Railroad Company unto D. O. Mills and Lloyd Tevis as trustees.

5th. The Court erred in not ordering complainant's bill of complaint dismissed, at complainant's cost.

WM. SINGER, JR.,

Attorney for the Defendants.

WM. F. HERRIN,

Counsel for the Defendants.

[Endorsed]: No. 1196. U. S. Circuit Court, Southern District of California, Southern Division. United States vs. Southern Pacific Railroad Co. et al. Assignment of Errors. Filed May 17, 1907. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Attorney for Defendants. Room 842, Flood Building, San Francisco.

*United States Circuit Court, Ninth Circuit, Southern  
District of California, Southern Division.*

No. 1196.

UNITED STATES,

Complainant and Appellee,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
et al.,

Defendants and Appellants.

**Bond on Appeal.**

We, Walter F. Parker and A. M. Jamison, both of Los Angeles County, California, are held and firmly bound to pay unto the United States, as complainant above-named, the sum of five hundred (\$500.00) dollars; for payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee,

have been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a supersedeas, from the decree entered in the above-mentioned cause on March 18th, 1907; and the condition of this obligation is, that if the defendants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void—otherwise to remain in full force.

Signed and sealed on May 17th, 1907.

WALTER F. PARKER. [Seal]

A. M. JAMISON. [Seal]

State of California,  
County of Los Angeles,—ss.

Walter F. Parker and A. M. Jamison, being duly sworn, each for himself says: I am one of the sureties on the foregoing bond, and subscribed my name thereto. I am a resident and freeholder within the county of Los Angeles, State of California, and am worth the sum of five hundred (\$500.00) dollars, over and above my just debts and liabilities, in property within the said county which is not exempt from execution.

WALTER F. PARKER.

A. M. JAMISON.

Subscribed and sworn to before me on May 17th,  
1907.

[Seal] M. I. DAVIS,  
Notary Public in and for Los Angeles County, California.

The foregoing bond approved, on May 17th, 1907.

ROSS,  
Circuit Judge.

[Endorsed]: No. 1196. U. S. Circuit Court,  
Southern District of California, Southern Division.  
United States vs. Southern Pacific Railroad Co. et  
al. Bond on Appeal. Filed May 17, 1907. Wm. M.  
Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm.  
Singer, Jr., Attorney for Defendants. Room 842,  
Flood Building, San Francisco.

*In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division.*

No. 1196.

THE UNITED STATES OF AMERICA, .  
Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY  
(a Corporation), D. O. MILLS and HOMER  
S. KING, Trustees, the CENTRAL TRUST  
COMPANY OF NEW YORK, Trustee, and  
JACKSON ALPHEUS GRAVES,  
Defendants.

**Clerk's Certificate to Transcript of Record.**

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California, do hereby certify the foregoing three hundred and twenty-two (322) typewritten pages numbered from 1 to 322 inclusive, and comprised in one (1) volume, to be a full, true, and correct copy of the record and pleadings, opinion of the Court, and of all proceedings and papers upon which the final decree entered on the 18th day of March, 1907,

was made, and also of the assignment of errors, petition for and order allowing appeal in the above and therein entitled cause, and that the same, together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause.

I do further certify that the cost of the foregoing record is \$195.05/100, the amount whereof is to be paid me by the Southern Pacific Railroad Company, one of the appellants in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California, this 13th day of August, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California.

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[Endorsed]: No. 1492. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, D. O. Mills and Homer S. King as Trustees, and Central Trust Company of

New York as Trustee, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California, Southern Division.

Filed August 17, 1907.

F. D. MONCKTON,

Clerk.

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[Endorsed]: No. 1492. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as Trustees, and Central Trust Company of New York, as Trustee, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California, Southern Division.

Filed September 10, 1907.

FRANK D. MONCKTON,

Clerk.

418 *Southern Pacific Railroad Company et al.*

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 1492.

**SOUTHERN PACIFIC RAILROAD COMPANY**  
et al.,

Appellants,

vs.

**UNITED STATES OF AMERICA,**

Appellee.

**Certificate of Clerk U. S. Circuit Court of Appeals  
to Printed Transcript of Record.**

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four hundred and seventeen (417) pages, numbered from one (1) to four hundred and seventeen (417), both inclusive, to be a true copy of the printed Transcript of Record upon Appeal from the United States Circuit Court for the Southern District of California, Southern Division, in the above-entitled case, as the original and copies thereof were printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit, and as the said original remains of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this eighteenth day of August, A. D. 1909.

[Seal]

F. D. MONCKTON,  
Clerk.



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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

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SOUTHERN PACIFIC RAILROAD COMPANY,  
D. O. MILLS and HOMER S. KING, AS TRUSTEES,  
and CENTRAL TRUST COMPANY OF NEW  
YORK, AS TRUSTEE,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

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## ADDENDA.

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PROCEEDINGS HAD IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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INDEX TO PROCEEDINGS HAD IN THE  
UNITED STATES CIRCUIT COURT OF  
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At a statated term, to wit, the October term, A. D. 1907, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City and County of San Francisco, on Monday, the seventh day of October, in the year of our Lord one thousand nine hundred and seven. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 1492.

THE SOOUTHERN PACIFIC RAILROAD COMPANY et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

**Order of Submission.**

Pursuaant to the stipulation of counsel for the respective parties therefor, filed September 20, 1907, and upon motion of Mr. Alfred P. Black, Assistant United States Attorney, ordered, appeal in the above-entitled cause submitted to Gilbert and Morrow, Circuit Judges, and De Haven, District Judge, for consideration and decision, on briefs, 30x30x300.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 1492.

**SOUTHERN PACIFIC RAILROAD COMPANY**  
et al.,

Appellants,

vs.

**THE UNITED STATES OF AMERICA,**  
Appellee.

**Opinion U. S. Circuit Court of Appeals.**

Appeal from the United States Circuit Court, Ninth  
Circuit, Southern District of California.

WM. SINGER, Jr., and WM. F. HERRIN,  
Counsel for Appellants.

ROBT. T. DEVLIN, United States Attorney,  
and GEO. CLARK, Assistant United States  
Attorney, Attorneys for Appellee.

Before GILBERT and MORROW, Circuit Judges,  
and DE HAVEN, District Judge.

DE HAVEN, District Judge.—This is an appeal  
by the defendants from a decree of the Circuit Court,  
Southern District of California, annulling a patent  
issued by the United States to the defendant South-  
ern Pacific Railroad Company for certain lands in  
the State of California.

The bill of complaint alleges, and the agreed state-  
ment of facts shows, that part of the land so patented  
is situated within the primary and part within the  
indemnity limits of the grant of land made to the

Atlantic and Pacific Railroad Company by the Act of Congress approved July 27, 1866 (14 Stat. 292).

The Atlantic and Pacific Railroad Company did not construct any portion of the road located by it in the State of California, as contemplated by that Act, and Congress on July 6, 1886 (24 Stat. 123), passed an act forfeiting the lands granted to that company, in so far as they were "adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits as contemplated to be constructed under and by the provisions" of the act making the grant.

The lands in controversy are within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the Act of March 3, 1871 (16 Stat. 573), and were selected by that company as indemnity lands after their restoration to the public domain, by the act of July 6, 1886, forfeiting the grant previously made to the Atlantic and Pacific Railroad Company.

It is not claimed by the United States that the Southern Pacific Railroad Company did not earn the lands granted to it nor that it was not entitled to make indemnity selections, to take the place of odd-numbered sections within the primary limits of the grant, to which it failed to acquire title. But the objection urged to the validity of the selections, in controversy, is that the lands were not subject to selection by that company, because they are all either within the primary or within the indemnity limits of the prior grant made to the Atlantic and Pacific

6 *Southern Pacific Railroad Company et al.*

Railroad Company, and this was the view taken by the Circuit Court.

1. The contention of the Southern Pacific Railroad Company, on this appeal, is that as the lands were public lands, open to settlement and entry, at the date of selection, such selection was valid.

Section 23 of the act of March 3, 1871 (16 Stat. 573), under which the appellant claims, reads:

“That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions and conditions, as were granted to said Southern Pacific Railroad Company by California by the act of July twenty-seven, eighteen hundred and sixty-six: Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.”

In discussing the effect of the proviso, contained in this section, the Supreme Court, in the case of *U. S. vs. Colton Marble and Lime Co.*, 146 U. S. 615, said:

“One thing that distinguishes the grant of 1871 to the Southern Pacific Railroad Company from most, if not all, other land grants, is the proviso somewhat considered in the opinion in the former cases, and



which reads: 'Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company.' Carefully inserted, in a way to distinguish this grant from ordinary later and conflicting grants, it must be held that Congress meant by it to impose limitations and restrictions different from those generally imposed in such cases and it in substance declared that the Southern Pacific Company should not in any event take lands to which any other company had at the time a present or prospective right. As it could have no effect upon the lands within the granted limits, it must have been intended to have some effect upon those within the indemnity limits, they being the only lands upon which it could operate."

It is true that in the case just cited, the question before the Court was not precisely the same as that which is presented here—the controversy in that case relating to lands within the granted limits of the Southern Pacific Railroad Company under its grant of March 3, 1871, and the indemnity limits of the prior grant to the Atlantic and Pacific Railroad Company. But in the later case of the Southern Pacific Railroad Company vs. The United States, 168 U. S. 1, part of the lands in controversy were indemnity selections made by the Southern Pacific Railroad Company, under the act of March 3, 1871, of lands within both the primary and indemnity limits of the grant made to the Atlantic and Pacific Railroad Company, by the act of July 27, 1866, and

in affirming the decree of the Circuit Court which annulled patents based upon such indemnity selections the Court must necessarily have held upon the record before it, that such selections were invalid and the patents issued thereon void, and this seems to have been the construction placed upon the decision in that case by the Supreme Court, in *Southern Pacific Railroad Company vs. The United States*, 189 U. S. 447, in which the Court in speaking of the contention of the *Southern Pacific Railroad Company*, that it had the right, under its grant of March 3, 1871, to make indemnity selections of land within the place limits of the grant made to the *Texas Pacific Railroad* by the same act, used this language:

“The *Texas Pacific* grant was declared forfeited by the Act of February 28, 1885, c. 265, 23 Stat. 337, and this forfeiture inured to the benefit of the United States. *United States vs. Southern Pacific Railroad Co.*, 146 U. S. 570. It is argued further, however, that if the *Southern Pacific* did not get the lands in question under its primary grant, it may take a part of them as indemnity lands. It is said that the company has a right to take them for that purpose if the status of the lands, at the time of the selection, permits it. *Ryan vs. Railroad Co.*, 99 U. S. 382. That contention seems to be disposed of by the *Southern Pacific Railroad vs. United States*, 168 U. S. 1, 47, 66, and the practice of the Land Department for many years has been inconsistent with it.”

The conclusion reached by the Circuit Court is in harmony with the two cases last cited, and the decree is therefore affirmed.

*vs. United States of America.*

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[Endorsed]: Opinion filed February 1, 1909.  
F. D. Monckton, Clerk, U. S. Circuit Court of Appeals, Ninth Circuit.

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*United States Circuit Court of Appeals for the Ninth Circuit.*

No. 1492.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING,  
as Trustees, and THE CENTRAL TRUST  
COMPANY OF NEW YORK, as Trustee,  
Appellants,

vs.

THE UNITED STATES OF AMERICA,  
Appellee.

**Decree U. S. Circuit Court of Appeals.**

Appeal from the Circuit Court of the United States for the Southern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby affirmed.

[Endorsed]: Decree. Filed and entered February 1, 1909. F. D. Monckton, Clerk.

Case No. 1492.

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

IN EQUITY.

SOUTHERN PACIFIC RAILROAD COM-  
PANY et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Stipulation and Order Staying Issuance of Mandate.**

It is hereby stipulated that issuance of Mandate pursuant to the opinion and decree filed and entered on February 1st, 1909, in the above-mentioned court and cause, be and is stayed for thirty days from July 31st, 1909; and that an order of said court may be made and entered accordingly.

WM. SINGER, Jr., and

D. V. COWDEN,

Attorneys for Appellants.

ROBT. T. DEVLIN,

Attorney for Appellee.

It is ordered.

(Signed) MORROW, Judge.

[Endorsed]: Stipulation and Order Staying Issuance of Mandate. Filed Jul. 28, 1909. F. D. Monckton, Clerk.

*Supreme Court of the United States.*

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, as Trustees, and CENTRAL TRUST COMPANY, of New York, as Trustee.

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Petition for Appeal.**

To the Honorable MELVILLE W. FULLER, Chief Justice of the United States, or to any Associate Justice of the Supreme Court of the United States:

Now come the Southern Pacific Railroad Company, D. O. Mills and Homer S. King as Trustees, and Central Trust Company of New York as Trustee, appellants above named, by their undersigned attorneys, and complain that in the record and proceedings, and also in the rendition of the decree of the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California, in the cause styled as above and numbered 1492, on the 1st day of February, A. D. 1909, affirming the decree of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit, in said cause, manifest error has intervened to the great damage of the petitioners; that the jurisdiction of the United States Cir-

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cuit Court, Southern Division, Southern District of California, Ninth Circuit, depended upon the fact that the said cause involved the construction of an Act of Congress granting lands to the Southern Pacific Railroad Company to aid in the construction of its railroad; that the amount involved therein and the matter in controversy exceeds the sum of one thousand dollars besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is final.

Wherefore petitioners pray for the allowance of an appeal to the end that the cause may be carried to the Supreme Court of the United States, and petitioners pray for such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected.

P. F. DUNNE,

WM. SINGER, Jr.,

Attorneys for Petitioners.

**Order Allowing Appeal.**

The foregoing claim of appeal is allowed and granted, to take effect upon the filing of a good and sufficient bond fixed in the sum of Five Hundred Dollars, conditioned as the law directs and duly approved.

It is further ordered that a true copy of the record, this petition and order, the assignment of errors filed therewith, and of all other papers and proceedings in the case, be sent to the Supreme Court of the United States, under seal of the United States Cir-

*vs. United States of America.*

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cuit Court of Appeals for the Ninth Circuit and the hand of the Clerk thereof.

So ordered, on August 4th, 1909.

(Signed) JOSEPH McKENNA,

Associate Justice of the Supreme Court of the United States.

[Endorsed]: Petition for Appeal to S. C. U. S. and Order Allowing Appeal. Filed Aug. 2, 1909. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

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*Supreme Court of the United States.*

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, as Trustees, and CENTRAL TRUST COMPANY, of New York, as Trustee.

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Assignment of Errors.**

The appellants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as Trustees, and Central Trust Company of New York as Trustee, by their undersigned attorneys, in connection with their petition and appeal herein, say that the decree rendered and entered on the 1st day of February, 1909, by the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in the State of California, in the cause styled

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as above and numbered 1492, affirming the decree of the United States Circuit Court, Southern Division, Southern District of California, Ninth Circuit, in said cause, is erroneous and against their just rights in the following particulars:

1st. The Court erred in affirming the decree of the said United States Circuit Court that the United States of America, appellee, is owner, by title absolute and in fee or at all, of the lands described in said decree, or any part thereof; and herein

(a). The Court erred in affirming said decree that these appellants have not, nor has either of them, any right, title, estate or interest in, or lien upon, the said lands; and

(b). The Court erred in affirming the order that these appellants, or any of them, be enjoined and restrained from asserting or claiming any right, title, estate or interest in, or lien upon, the said lands, adverse to appellee.

2d. The Court erred in affirming the decree or order for the cancellation or annulment of the patent issued by the United States unto the appellant Southern Pacific Railroad Company, for said lands.

3d. The Court erred in affirming the order that the appellee have and recover from the appellant Southern Pacific Railroad Company, its costs herein.

4th. The Court erred in failing to reverse said decree for not deciding and decreeing that

(a). The patent from the United States unto appellant Southern Pacific Railroad Company, for the lands described in said decree, was lawfully issued, and is valid, and



(b). The appellants D. O. Mills and Homer S. King, as trustees, are bona fide purchasers of the said lands; and

(c). The appellant Central Trust Company of New York, as trustee, is a bona fide purchaser of the said land, subject to the mortgage of April 1st, 1875, by Southern Pacific Railroad Company unto D. O. Mills and Lloyd Tevis, as trustees.

5th. The Court erred in failing to reverse said decree for not ordering appellee's bill of complaint dismissed, at appellee's cost.

P. F. DUNNE,

WM. SINGER, Jr.,

Attorneys for Appellants.

[Endorsed]: Assignment of Errors. Filed August 2, 1909. F. D. Monekton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

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*Supreme Court of the United States.*

SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and HOMER S. KING, as Trustees, and CENTRAL TRUST COMPANY, of New York, as Trustee,  
Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Bond on Appeal.**

The National Surety Company, a corporation organized under the laws of the State of New York,

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is held and firmly bound to pay unto the United States of America, as appellee above named, the sum of \$500.00; for payment of which, well and truly to be made, it binds itself, its successors and assigns, firmly by these presents.

The appellants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, have been allowed an appeal to the Supreme Court of the United States, from the decree made and entered on February 1st, 1909, in the United States Circuit Court of Appeals for the Ninth Circuit, in the cause entitled as above and numbered 1492; and the condition of this obligation is, that if the appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void—otherwise to remain in full force.

Dated August 4th, 1909.

NATIONAL SURETY COMPANY,

[Seal]

By FRANK L. GILBERT,

Resident Vice-President and General Manager.

C. E. OBERG,

Resident Assistant Secretary.

The foregoing bond is approved, on August 6, 1909.

JOSEPH McKENNA,

Associate Justice of the Supreme Court of the United States.

[Endorsed]: Bond on Appeal. Filed August 6, 1909. F. D. Monekton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

*United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 1492.

SOUTHERN PACIFIC RAILROAD COM-  
PANY et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Certificate of Clerk U. S. Circuit Court of Appeals  
to Proceedings and Transcript of Record upon  
Appeal to the Supreme Court of the United  
States.**

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixteen (16) pages, numbered from one (1) to sixteen (16), both inclusive, to be a true copy of the Assignment of Errors and of all proceedings had in the above-entitled case in the said United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed therein, as the same remain on file and of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record, constitute a true copy of the complete record in the above-entitled case and the Transcript of Record upon the appeal taken therein to the Supreme Court of the United States.

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Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighteenth day of August, A. D. 1909.

[Seal]

F. D. MONCKTON,  
Clerk.

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**Citation on Appeal.**

UNITED STATES OF AMERICA—ss.

The President of the United States, To United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within sixty days from the date of this citation, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, from a decree signed, filed and entered therein on February 1st, 1909, in that certain suit numbered 1492, wherein Southern Pacific Railroad Company, D. O. Mills and Homer S. King as trustees, and Central Trust Company of New York as trustee, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said petition and order allowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

*vs. United States of America.*

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Witness, the Honorable JOSEPH McKENNA,  
Associate Justice of the Supreme Court of the  
United States, this 4th day of August, A. D. 1909.

(Signed) JOSEPH McKENNA,  
Associate Justice of the Supreme Court of the  
United States.

Service, by copy, of the within Citation is hereby  
admitted on August 4th, 1909.

ROBT. T. DEVLIN,  
United States Attorney,  
Attorney for Appellee.

[Endorsed]: Citation on Appeal. Filed Aug. 4,  
1909. F. D. Monekton, Clerk U. S. Circuit Court of  
Appeals for the Ninth Circuit.

JAN 20 1912

JAMES H. MCKENNY

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# Supreme Court of the United States.

OCTOBER TERM, 1911.

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No. 121.

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SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS  
and HOMER S. KING, Trustees, and CENTRAL TRUST  
COMPANY OF NEW YORK, Trustee,

*Appellants,**against*

THE UNITED STATES.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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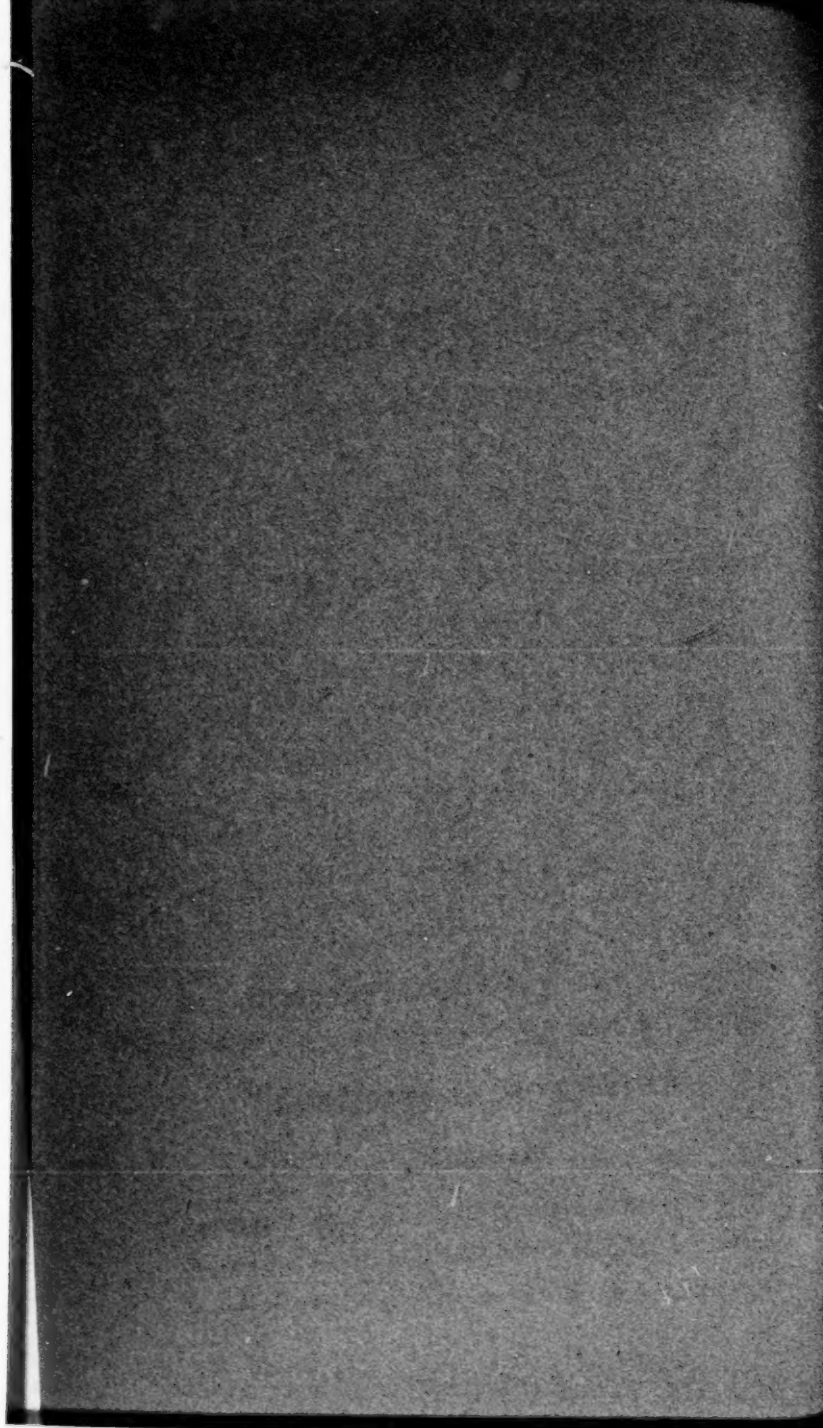
## BRIEF FOR APPELLANTS.

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MAXWELL EVARTS,

*Of Counsel for Appellants.*



# Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 121.

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SOUTHERN PACIFIC RAILROAD COM-  
PANY, D. O. MILLS and HOMER S.  
KING, Trustees, and CENTRAL TRUST  
COMPANY OF NEW YORK, Trustee,  
APPELLANTS,

AGAINST

THE UNITED STATES.

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APPEAL FROM THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE NINTH CIRCUIT.

## **BRIEF FOR APPELLANTS.**

### **Statement.**

By the third section of the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad



and telegraph line from the States of Missouri and Arkansas to the Pacific Coast" (14 U. S. Stats., 292), lands were granted to the Atlantic and Pacific Railroad Company in aid of its projected line from the town of Springfield, Missouri, to the Pacific Ocean (Act printed in full in Appendix, page 1), and by the eighteenth section of this act, a grant of lands was made to the Southern Pacific Railroad Company known as the "Southern Pacific *Main* Line Grant". Lands of the "*Main* Line Grant" are not involved on this appeal.

By section 23 of the act of Congress approved March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes" (16 U. S. Stats., 573, 579), a grant of land was made to the Southern Pacific Railroad Company of California in aid of a line of railroad from a point at or near Tehachapa Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River. This grant is known as the "Southern Pacific *Branch* Line Grant," and was made upon like terms and conditions as the grant to the Southern Pacific Railroad Company by the eighteenth section of the act of July 27, 1866 (Appendix, page xviii).

The Branch Line Grant to the Southern Pacific Railroad Company under the act of March 3, 1871, while upon like terms and conditions as the Main Line Grant was however subject to the proviso that it should "in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company" (Appendix, page XXI).

These three grants (the grant to the Atlantic and Pacific and the Main Line and Branch Line grants to the Southern Pacific) were made upon the terms and conditions of the third section of the Atlantic and Pacific Act which described (in States) primary or granted limits of ten alternate sections (*i. e.* : twenty miles) in width on each side of the railroad line adopted by the company, and indemnity limits extending ten miles beyond such primary limits (Appendix, page VII).

The Atlantic and Pacific Railroad Company never built any portion of its projected railroad in the State of California, and on the 6th day of July, 1886, an act of Congress was passed (24 U. S. Stats., 123) forfeiting whatever rights the Atlantic and Pacific Railroad Company may have had in said lands under the act of July 27, 1866,

and restoring said lands to the public domain (Appendix, page xxii).

The lands in controversy in this suit are within the indemnity limits of the grant to the Southern Pacific Railroad Company under the act of March 3, 1871, and within the place limits and indemnity limits of the grant to the Atlantic and Pacific Railroad Company under the Act of July 27, 1866 (Record, page 11).

On November 10, 1902, the Southern Pacific Railroad Company duly filed its application in the Department of the Interior to select the lands involved as indemnity lands under its grant of March 3, 1871, and on June 30, 1903, a patent was issued by the United States to the Southern Pacific Railroad Company for said lands (Record, p. 12).

Thereafter, and on July 17, 1905, the United States filed in the Circuit Court of the United States for the Southern District of California, its bill of complaint seeking to quiet its title to said lands, and to have vacated and annulled the patents for said lands issued by the United States to the Southern Pacific Railroad Company (Record, page 5). The Circuit Court being of the opinion that the questions involved had already been determined by prior decisions of this Court

granted the prayer of the bill, and a final decree was entered on March 18, 1907, adjudging that the patents issued by the United States to the Southern Pacific Railroad Company for the lands involved should be canceled and annulled (Record, page 70).

From this decree an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit, and the decree of the Circuit Court was there affirmed (Record, page 424).

From the decree of the Circuit Court of Appeals affirming the decree of the Circuit Court this appeal has been taken, and the single question presented in this case is this—

Is the Southern Pacific Railroad Company entitled to select land within the indemnity limits of its grant of 1871 which is at the time of selection a part of the public domain?

### **Specification of Errors.**

The United States Circuit Court of Appeals for the Ninth Circuit erred,

I. In affirming the decree of the court below directing the cancellation of the patents of the land in controversy.

II. In not reversing said decree.

III. In not holding that the Southern Pacific Railroad Company was entitled to select the lands in question as indemnity for losses within its place limits for the reason that at the time of such selection said lands were part of the public domain.

IV. In holding that the Southern Pacific Railroad Company was not entitled to select the land in question within the indemnity limits of its grant under the act of 1871, for the reason that said lands were also within the limits of the grant to the Atlantic and Pacific Railroad under the act of 1866.

V. In not holding that the act of July 6, 1886, forfeiting the lands granted to the Atlantic and Pacific Railroad Company, forfeited only the rights to said land of the Atlantic and Pacific Railroad Company, and that, as soon as said lands became by forfeiture part of the public lands of the United States, the Southern Pacific Railroad Company was entitled to select therefrom indemnity lands in lieu of lands lost within the place limits of its grant.

VI. In not holding that the status of lands within the indemnity limits of a railroad grant

at the date of selection determines the right of the railroad to such lands. If then public lands, they are open to selection, without regard to the fact that at some prior time they may not have been public lands and may not have been open to selection.

### **FIRST POINT.**

**The Southern Pacific Railroad Company under its Branch Line Grant of March 3, 1871, was entitled to select the lands in question in lieu of lands lost within the place limits of its grant.**

It is established law that a railroad is entitled to select indemnity lands from any lands within the indemnity limits of its grant which at the time of selection are public lands. The Government undertakes now to make a distinction between the case at bar and the rule established by this Court. While the lands in controversy were unquestionably public lands at date of selection and under the ordinary rule were open to selection by the Southern Pacific, yet the United States now insists that because of prior decisions of this Court in reference to this particular grant, the

ordinary rule does not apply, and that these lands, which were at one time within the grant to the Atlantic and Pacific Railroad, cannot be selected by the appellants as indemnity for the losses within the place limits of its grant.

In *Ryan vs. Railroad Company*, 99 U. S., 382, the land in question was embraced within the indemnity limits of the grant in aid of the California and Oregon Railroad Company under the act of July 25, 1866 (14 U. S. Stats., 239). At the time of the grant to the Railroad Company the land was not public land, but was claimed to be within the boundaries of a prior Mexican grant. Between the date of the granting act and of the selection of the land by the Railroad Company as indemnity land, and about a year prior to such selection, this Court held the Mexican grant invalid, and the land was then and thereby restored to the public domain. It was decided by this Court that whereas the rights of the company under such a grant in respect to lands within *primary* limits depend upon the status of the lands as public lands or otherwise at the date of the act, and the time of definite location, the right to lands within *indemnity* limits does not depend upon the status of such lands at the date of the granting act, but upon their status

as public lands or otherwise at the time of selection. In the course of his opinion Mr. Justice SWAYNE said at page 388 :

"It was within the secondary or indemnity territory where that deficiency was to be supplied. The railroad company had ~~not~~ and could not have any claim to it until specially selected, as it was, for that purpose. It was taken to help satisfy the grant to the extent that the odd sections originally given failed to meet its requirements. When so selected there was no Mexican or other claim impending over it. It had ceased to be *sub judice*, and was no longer in litigation. It was as much 'public land' as any other part of the national domain. The patent gave the same title to the appellee that a like patent for any other public land would have given to any other party. The Mexican claim when condemned lost its vitality. From that time, as regards the future, it ceased to be a factor to be considered, and was in all respects as if it had never existed. In this state of things the appellee acquired its title, and that title is indefeasible."

In the present case lands within the indemnity limits of the "Southern Pacific *Branch Line Grant*," which was also embraced within the primary and indemnity limits of the Atlantic and Pacific Grant, is now since the Forfeiture Act of



1866 (except so far as indemnity rights therein of the Southern Pacific Railroad Company are concerned) as much a part of the public domain of the United States as was the land in the *Ryan Case*, which, when the claim under the Mexican grant was forfeited, was restored to the public domain and open to selection by the California and Oregon Railroad Company. The right of the Southern Pacific to select such lands within its indemnity limits is entirely unaffected by the past history of that land. The Atlantic and Pacific Grant when forfeited "ceased to be a factor". It is as if the grant to the Atlantic and Pacific "had never existed". Just as much as in the *Ryan Case* the Mexican claim when condemned "ceased to be a factor" and was deemed to have "never existed," so far as the right of the California and Oregon Railroad to select indemnity lands from within the limits of the Mexican grant was concerned. The question is, what is the land now when selection is sought to be made? Is it now public land or not? If it is now public land, then it is of no importance whatever, what parties in the past may have had claims or rights thereto, and it would seem absolutely immaterial whether the title to such land had formerly been claimed under a Mexican

title thereafter declared void (as in the *Ryan Case*) or in a grant of the United States subsequently declared forfeited as in the case at bar.

In *Alabama and Chattanooga R. R. Co.*, XX. L. D., 408, it appeared that the land in question had been taken under a homestead entry at the time the railroad made application to select the same as within its indemnity limits. The claim under the homestead entry was afterwards relinquished to the United States, "thus leaving the question wholly between the company and the United States" as to whether the railroad was entitled to the land after its restoration to the public domain. Secretary Smith held that :

"While the selection in question could not properly have been allowed at the time made by reason of Morton's entry, yet it now appears that such entry never ripened into a patent, but was relinquished to the United States. That being true, I see no reason why the selection may not now be approved" (p. 409).

In *Southern Pacific R. R. Co.*, XXVI. L. D., 452, it was held by Secretary Bliss that :

"Lands excepted from the grant to the Southern Pacific by homestead entries that

were existing at the date when the grant took effect, may be taken on behalf of said grant in lieu of mineral lands, if at the date of selection such entries have been canceled, and the lands are free from other claims or rights " (Syllabus).

Since the *Ryan Case* the decisions of the Department of the Interior have been invariably to the effect that the status of lands within indemnity limits at the time of selection determines entirely the right of the railroad thereto.

In *Allers vs. Northern Pacific R. R. Co.*, 9 L. D., 452 (1899), Secretary Noble held that :

" A tract is not excluded from indemnity selection by reason of its being within the *primary limits* of another grant, if it is in fact vacant public land at date of selection, and otherwise subject to such appropriation " (Syllabus).

In *Northern Pacific R. R. Co. vs. Halvorson*, 10 L. D., 15 (1890), Secretary Noble held that :

" The right to *select indemnity* is not defeated by the fact that the land is within the *primary limits* of another grant, if the land is excepted from such grant, and vacant public land at date of selection " (Syllabus).

In *Missouri, K. & T. Ry. Co. vs. Beal*, 10 L. D., 504 (1890), Secretary Noble held that :

" Prior to selection, the right to indemnity lands is only a float ; and the right acquired by selection is dependent upon the status of the lands at date of selection, and not at date of withdrawal " (Syllabus).

In *Northern Pacific R. R. Co. vs. Moling*, 11 L. D., 138 (1890), Secretary Noble held that :

" The right to select a tract as indemnity under a railroad grant, is not defeated by the mere fact that the selection is within the *primary limits* of another grant, if the tract is vacant public land at date of selection " (Syllabus).

In *Hensley vs. Missouri, K. & T. Ry. Co.*, 12 L. D., 19 (1891), Secretary Noble held that :

" The right to take a tract of land as indemnity is determined by its status at the date of selection and not at date of withdrawal " (Syllabus).

In *Northern Pacific R. R. Co. vs. Bass*, 13 L. D., 201 (1891), Acting Secretary Chandler held that :

" The mere fact that a tract is within the *geographical* limits of another grant will not defeat the right to select the same as indemnity, if it is otherwise subject to selection " (Syllabus).

In *Hastings and Dakota Ry. Co. vs. St. Paul, M. & M. Ry. Co.*, 13 L. D., 535 (1891), Acting Secretary Chandler held that:

"The right acquired by an indemnity selection is dependent upon the status of the land at date of selection" (Syllabus).

In *St. Paul, M. & M. R. Co. vs. Munz*, 17 L. D., 288 (1893), Secretary Smith held that :

"A tract of land within the *primary limits* of one grant, and the *indemnity limits* of another, may be selected by the latter, on proper basis, if excepted from the grant to the former, and free from other claims at date of selection" (Syllabus).

In *South and North Alabama R. R. Co. vs. Hall*, 22 L. D., 273 (1896), Secretary Smith held that:

"The status of indemnity lands at the date of selection, not definite location of the road, determines the right of the company thereto" (Syllabus).

In *Southern Pacific Railroad Company vs. McKinley*, 22 L. D., 493 (1896), Secretary Smith held that:

"The right of a railroad company to take a tract of land as indemnity must be de-

terminated by the status of such tract at the date of the application to select the same" (Syllabus).

The *Ryan Case* has since its decision always been referred to with approval by this Court. The decisions of the Interior Department since the *Ryan Case* have been in accord therewith. It is inconceivable that the doctrine of the *Ryan Case* so important in land grant law and so long established should be overturned by a decision of this Court in which there was no discussion of or reference to the *Ryan Case*. We therefore respectfully submit, that the Southern Pacific Railroad is now entitled to select from within the indemnity limits of its Branch Line Grant, lands granted to the Atlantic and Pacific Railroad which were restored to the public domain by the Forfeiture Act of 1886, and were public lands of the United States, at the date of selection by the Southern Pacific and the issue of the patents therefor.

#### **Government's Claim of Res Adjudicata.**

There is no pretense on the part of the Government that the Southern Pacific Railroad Company is not entitled to indemnity lands to take the place of losses within its primary limits.

Upon this point the court below said at page 425 of the record :

“ It is not claimed by the United States that the Southern Pacific Railroad Company did not earn the lands granted to it nor that it was not entitled to make indemnity selections, to take the place of odd-numbered sections within the primary limits of the grant, to which it failed to acquire title.”

The ground alleged for the cancellation of the patents issued in this case is that this Court has already decided that the Southern Pacific Railroad Company is not entitled to any indemnity land under its Branch Line Grant within the limits of the forfeited Atlantic and Pacific Grant, and the whole discussion centers upon the decision in *Southern Pacific Railroad Company vs. United States*, 168 U. S., 1.

It is important to note that the lands in controversy in this suit were not within the limits which were involved in the suit in 168 U. S., 1.

There is no need to consider at all the prior cases decided by this Court in 146 U. S., for the reason, that the lands involved in those suits were lands within the *place* limits of the Southern Pacific Branch Line Grant. In the first of the cases (146 U. S., 570), the con-

troversy related entirely to *place* lands of the Southern Pacific Branch Line Grant and their conflict with Atlantic and Pacific *place* lands. In the second case (146 U. S., 615), the lands were *place* lands of the Southern Pacific Branch Line Grant and *indemnity* lands of the Atlantic and Pacific Grant, and the question decided in those cases was, that the Atlantic and Pacific Railroad had filed a good and sufficient map of definite location and had a vested claim to land in its place limits and a prospective right to land within its indemnity limits, as of the date of the granting act (Act of July 27, 1866), and that upon the forfeiture of such lands, the Southern Pacific could not take title to any of said lands within its primary or place limits, as the only place lands it was entitled to under its grant were lands free from any claim at the time of the filing by the Southern Pacific Railroad of its map of definite location in accordance with the decision of this Court in *Newhall vs. Sanger*, 92 U. S., 761.

We of course do not have to point out here that it was impossible for the question arising in the case at bar—as to the right of the Southern Pacific to select lands within the indemnity limits of its grant which were public lands at



the date of selection—to have been considered in any way in the cases in 146 U. S., 615, for the reason that there the lands in controversy were *place* lands, while here the lands in controversy are *indemnity* lands. In the course of his opinion, Mr. Justice BREWER was most careful to indicate that his decision was limited entirely to the *place* lands as distinguished from *indemnity* lands and said at page 618:

“It must be borne in mind that these lands were in the granted limits of the Southern Pacific, and *that they are not lands in respect to which that company would have a right of selection, and might defer the exercise of that right until such time as suited it.* Being within the granted limits of the Southern Pacific, all its rights thereto vested at once, at the time of the filing of the map of definite location, and were not and could not be added to after that time; everything it could have in those lands it had then, and at that time there was an existing prospective right on the part of the Atlantic and Pacific Company to make a selection.”

The Government will undoubtedly concede that the cases decided by this Court in 146 U. S., have no application of any kind to the question now before the Court. The claim that the Southern Pacific is barred from now raising this

question must necessarily be based (as it was in the opinion below) upon the decision in 168 U. S., 1. It is, therefore, important that this Court should have a clear and complete understanding of the precise question which was determined by the Court in that case, and we know of no better way of stating what was there decided than the statement of the case made by Mr. Justice BREWER in the subsequent case of *Southern Pacific Railroad Co. vs. U. S.*, 183 U. S., 519.

In the case in 183 U. S., the lands involved were (1) place lands of the Southern Pacific Main Line Grant conflicting with place lands of the Atlantic and Pacific Grant; (2) place lands of the Southern Pacific Main Line Grant and indemnity lands of the Atlantic and Pacific Grant; (3) indemnity lands of the Southern Pacific Main Line Grant in conflict with indemnity lands of the Atlantic and Pacific Grant; and (4) indemnity lands of both the Main and Branch Line Grants to the Southern Pacific Railroad in conflict with the place and indemnity lands of the Atlantic and Pacific Grant.

This Court decided the case in 183 U. S., in favor of the claim of the Southern Pacific Railroad Company in so far as the conflict between the place lands of the Main Line Grant and the place lands of

the Atlantic and Pacific Grant were concerned, and dismissed "the appeal as to all other lands without prejudice to any other suit or action" (183 U. S., 535).

This dismissal without prejudice as to the lands within the indemnity limits of the Southern Pacific Main and Branch Line grants was because the adjustment of such claim was properly to be left to the Land Department which in its conclusions was to be guided by the decision of this Court in 183 U. S., the Court saying at page 535 :

"It having been adjudged that the Southern Pacific, by the construction of its road eastward from Mojave to Needles, became entitled to the benefit of the grant made by the eighteenth section of the act of 1866, the adjustment of the grant is properly to be had in the Land Department, *subject, of course, if necessary, to further contests in the courts.*"

In this case in 183 U. S., 519, the United States insisted that the Railroad Company was estopped from raising the questions involved by reason of the decision of this Court in 168 U. S., 1, which is now relied on by the Government as a bar. The whole controversy, therefore, in the case in 183 U. S., 519, centered upon this decision in 168

U. S., 1, and this Court was not impressed by the claim of the Government that the decision in 168 U. S., 1, was a bar to the case in 183 U. S., 519, and declined to sustain the Government's contention, and said with reference to the prior decision in 168 U. S., 1, at page 532, as follows :

*" Obviously the fact settled by the decisions in those cases was the filing by the Atlantic and Pacific of an approved map of definite location. Upon that the controversy hinged. Such a map having been filed the title of the Atlantic and Pacific vested as of the date of the act of July 27, 1866, and inasmuch as the Southern Pacific claimed only by a grant of date March 3, 1871, it took no title. This which is apparent from the foregoing quotations is emphasized by the full discussions in the opinions, as well as by the allegations in the pleadings upon which the cases were tried. That fact having been determined must be taken in the present suit as not open to dispute." \* \* \**

" But it was not adjudged in those cases either that the Southern Pacific had no title to any real estate by virtue of the act of 1866, or that if there was any real estate to which it had any claim or right by virtue of that act, such claim was not of equal force with that of the Atlantic and Pacific. The general statement at the close of the quotation from 146 U. S., 607, ' that the latter company has no title of any kind to these

lands,' and the similar statement in paragraph 3 of the quotation from 168 U. S., 61, are to be taken as applicable only to the facts presented, and cannot be construed as announcing any determination as to matters and questions not appearing in the records. Of course, the decrees that were rendered in those cases are conclusive of the title to the property involved in them, no matter what claims or rights either party may have had and failed to produce, but as to property which was not involved in those suits they are conclusive only as to the matters which were actually litigated and determined. 'On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action' (*Cromwell v. County of Sac*, 94 U. S., 351, 356). 'The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is therefore not conclusive in this as to matters which might have been decided, but only as to matters which were in fact decided.' (*Last Chance Mining Co. v. Tyler Mining Co.*, 157 U. S., 683, 687). The question here presented was not determined in the prior cases, and is whether the Southern Pacific acquired any title to lands other than those involved in those suits by virtue of the act of 1866, and that question,

as we have seen, must be answered in the affirmative." \* \* \*

"Our conclusions, therefore, are that the United States, having become by the forfeiture act of July 6, 1886, repossessed of all the rights and interests of the Atlantic and Pacific in this grant within the limits of California, hold an equal, undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of the grant to the Atlantic and Pacific and of that made to the Southern Pacific by the act of July 27, 1866; and that the Southern Pacific holds the other equal, undivided moiety therein."

These three cases (146 U. S., 570; 146 U. S., 615; and 168 U. S., 1) determined therefore one thing and one thing only, to wit, that the Southern Pacific Railroad Company took no place lands under its grant of March 3, 1871, which were in conflict with the Atlantic and Pacific Grant. This was the precise question settled in the two cases in 146 U. S., in which it was held that the Atlantic and Pacific had filed an approved map of definite location and that therefore the interests of the Atlantic and Pacific in its grant became vested as of the date of the act of July 27, 1866, and that therefore the Southern Pacific Railroad by reason of its grant of March 3, 1871, took no title therein of any

kind at the date of its grant. There was no suggestion in these cases as to the right of the Southern Pacific with reference to its indemnity lands under the Branch Line Grant. Then came the case in 168 U. S., 1, in which again the Railroad tried to raise the question of the validity of the Atlantic and Pacific map already decided in the cases in 146 U. S., and the Court in 168 U. S., 1, discussed no other question, but simply said that upon this point of the validity of the maps filed by the Atlantic and Pacific the question was determined by the prior decisions in 146 U. S.

This Court, in 183 U. S., 519, was careful to point out that the only lands involved in 168 U. S., 1, were "granted" or place lands, and Mr. Justice BREWER, in speaking of the lands in controversy in 168 U. S., 1, said at p. 529:

"The lands in controversy in those suits were lands within the *granted* limits of both companies at the place of conflict."

We therefore have this situation, that in no decision yet of this Court has it been held that the Southern Pacific Railroad has not the right to select its indemnity lands from the forfeited limits of the Atlantic and Pacific Grant.

In other words this Court has never considered the question of whether the right to select these indemnity lands is not within the well-established doctrine of the *Ryan Case*. We say that it is, and that no intimation to the contrary can be found. The law is settled that any railroad company can select any lands within its indemnity limits so long as they are public lands at the time of selection, without reference to what their character may have been theretofore. Now no reason is suggested and never has been suggested or passed upon by this Court as to why this particular grant should be deemed an exception to the general rule. This proposition has never been discussed or decided by this Court.

It is true that in the case of *Southern Pacific Railroad Company vs. United States*, 189 U. S., 447, the conflict of the grant to the Southern Pacific Railroad Company under the act of March 3, 1871, with the grant to the Texas Pacific Railroad Company was under consideration, and this Court said, at page 451 :

“ It is argued further, however, that if the Southern Pacific did not get the lands in question under its primary grant, it may take a part of them as indemnity lands. It is said that the company has a right to take



them for that purpose if the status of the lands at the time of selection permits it. *Ryan v. Railroad Co.*, 99 U. S., 382. That contention seems to be disposed of by *Southern Pacific Railroad v. United States*, 168 U. S., 1, 47, 66, and the practice of the Land Department for many years has been inconsistent with it. \* \* \* When it is decided that the company got no title to the land within its twenty mile limit, it would be contrary to the intimations of the cases to allow it to take the adjoining strip outside under a claim of indemnity. See *Bardon v. Northern Pacific Railroad*, 145 U. S., 535, 545; *Clark v. Herington*, 186 U. S., 206."

This decision delivered by Mr. Justice HOLMES means and was intended to mean simply that where as in the case before him for any reason the entire grant of place lands fails there cannot be any selection of indemnity lands. In other words as a condition precedent to the selection of indemnity lands there must be a grant of place lands which in part and not as a whole has failed. This principle has no application here.

If we are wrong in our conclusion as to what the case construing the Texas Pacific Act of 1871 decided, then we say that this Court in 189 U. S., 447, was under a misapprehension in supposing that the established doctrine in the *Ryan Case* had been overruled or was intended to

be overruled by this Court in the case of 168 U. S., 1. No reference of any kind was made thereto. The sole question there decided was that the principle of *res adjudicata*, prevented the Southern Pacific from again raising therein the question as to the validity or invalidity of the Atlantic and Pacific map of definite location. That was the entire question and there was no suggestion of overruling the settled doctrine of the *Ryan Case*, and no discussion of that case in any way whatever was had in the case in 168 U. S., 1. As was said in *Holmes v. Railroad Company*, 7 Sawy., 388, 399, "It cannot be supposed that it was the intention to overrule long-established principles without even mentioning the cases in which they were elaborately discussed and established."

In addition this Court in 183 U. S., 519, has expressly held that the case in 168 U. S., 1, was limited solely to a question of *place* or *granted* lands. Therefore it could not be a bar in regard to *indemnity* lands. At page 529 Mr. Justice BREWER in speaking of 168 U. S., 1, and the cases in 146 U. S., said :

"The lands in controversy in those suits were lands within the *granted* limits of both companies at the place of conflict."

Just what this Court meant by saying in 189 U. S., 447, 452, that the intimations of the cases was not to allow a company to take indemnity lands when there was a loss within the place limits is not apparent, unless as has just been pointed out, the Court referred to a failure of the entire grant of place lands and not to partial losses within a valid grant. The very purpose of the granting statute was to permit a railroad company, when it lost lands within its place limits from any cause whatever to make good such loss within its indemnity limits. The greater the loss in place lands the greater the need of indemnity lands to make it good, and the cases cited do not in any way sustain the suggested intimation.

The case of *Bardon vs. Northern Pacific Railroad*, 145 U. S., 535, 545, is one of the two cases referred to by Mr. Justice HOLMES as containing this intimation. We think this statement is due to a misunderstanding of the case, resulting from an expression of Mr. Justice FIELD in the *Bardon Case*. All that Mr. Justice FIELD said was, that when land was restored to the public domain from within the place limits of a grant to a railroad, such land was not open to selection by the *same* railroad as indemnity land because it didn't fall

within the class of lands designated by the granting act as a source of supply of indemnity lands. His own words at page 545 are as follows :

“ Not only does the land once reserved not fall under the grant should the reservation afterwards from any cause be removed, but it does not then become a source of indemnity for deficiencies in the place limits. Such deficiencies can only be supplied from lands within limits *designated by the granting act or other law of Congress.*”

Of course what Mr. Justice FIELD said must be read with reference to the facts in the case before him. In the *Bardon Case* the land in controversy was within the place limits of the grant to Northern Pacific Railroad Company. At the time the railroad took title to its place lands, the land involved was not public land, and was excepted from the grant, for the reason that it had been taken up on a pre-emption claim, and the only question before the Court was, whether upon the restoration to the public domain of lands within the place limits of a railroad grant, which were reserved at the time of the grant, such lands fell within the grant. It was held that the land in question could not be acquired by the railroad as part of its place lands for the reason that it “ was severed from the mass of

public lands from which the grant to the Northern Pacific Railroad Company could alone be satisfied " by the terms of the granting act. In other words, the Court held that at the time the road of the Northern Pacific was definitely fixed, the land involved was pre-empted. It did not, therefore, then fall within the grant of *place* lands and could not thereafter by reason of the cancellation of the pre-emption claim, because it was too late, the grant of the place lands by its terms only taking effect as of a certain time, viz., when the line of road was definitely fixed, which was prior to the cancellation of the claim.

It was at the same time held that the land so restored to the public domain could not be taken by the railroad as indemnity land to make up a deficiency within the place limits, for the sole reason, that such deficiency could only be supplied from lands within the indemnity limits expressly specified by Congress.

When properly understood, it is not possible to say, that the *Bardon Case* in any way conflicts with the doctrine of the *Ryan Case* above quoted. All that it held with reference to indemnity lands simply was that deficiencies in place limits could "*only be supplied from lands within limits designated by the granting act or other law of Con-*

gress." The land involved in the *Bardon Case* was not within such indemnity limits, and when the pre-emption claim thereto was canceled, it could not, therefore, be considered *a source of indemnity*.

It is perfectly clear that this Court did not undertake to decide in the *Bardon Case* that, if the pre-empted land in question had been within the indemnity lands of the Northern Pacific Grant, and the pre-emption claim had been canceled subsequent to the granting act, the railroad would not have been entitled to select such land as indemnity land after its restoration to the public domain. If any inference from the *Bardon Case* is to be drawn of any kind with reference to this question now before the Court, it would seem to be that the Court would have decided that the railroad was entitled to make such selection, for the sole reason given by the Court why the land after restoration to the public domain could not be taken as indemnity land was that it was not within the indemnity limits granted to the railroad company, implying, that if it had been within such indemnity limits, the railroad company would have been entitled to it, after it had been restored to the public domain, although it was not public land at the time of the grant.

We are unable to see that the remaining case of *Clark vs. Herington*, 186 U. S., 206, cited by Mr. Justice HOLMES in 189 U. S., 448, 452, in support of the proposition that losses within place limits cannot be made good from indemnity limits, has any application whatever to the question. The only reference in this case that we can find to indemnity lands is that :

“ No title to indemnity lands is vested until an approved selection has been made ; up to which time Congress has full power to deal with lands in the indemnity limits as it sees fit ” (Syllabus).

The tract of land involved in the *Clark Case* was in an even numbered section within the place limits of the grant to the Union Pacific Railroad Company, Eastern Division. The Union Pacific, of course, received the odd sections in its place limits and the United States retained the even sections. It was also within the indemnity limits of the grant to the Missouri, Kansas and Texas Railroad Company, and was selected by the latter to make good losses within its place limits. Prior, however, to the selection of this land by the Missouri, Kansas and Texas Railroad Company, an act was passed by Congress which provided that

such even numbered sections within the place limits of the grant to the Union Pacific Railroad Company, Eastern Division, should be "rated at \$2.50 per acre and subject only to entry under those [the pre-emption and homestead] laws." In other words, the lands would have been open to selection to make good losses in the Missouri, Kansas and Texas Railroad Company's place limits, if it had not been for this act of Congress passed prior to the selection of the lands by that Company.

As we look at it this *Clark Case* simply emphasizes the proposition which we are urging, viz: that whether indemnity lands are open to selection or not depends upon whether those lands are public lands at the date of selection, and not in any way what they were at any prior time. At any time prior to selection Congress may make any disposition thereof it chooses, just as it can of any other public lands.

We, therefore, respectfully submit that the Southern Pacific is not estopped by any prior decision of this Court in any case between it and the United States from now raising the question that it is entitled to select indemnity lands from the public lands of the United States within the indemnity limits of its land grant of 1871, with-



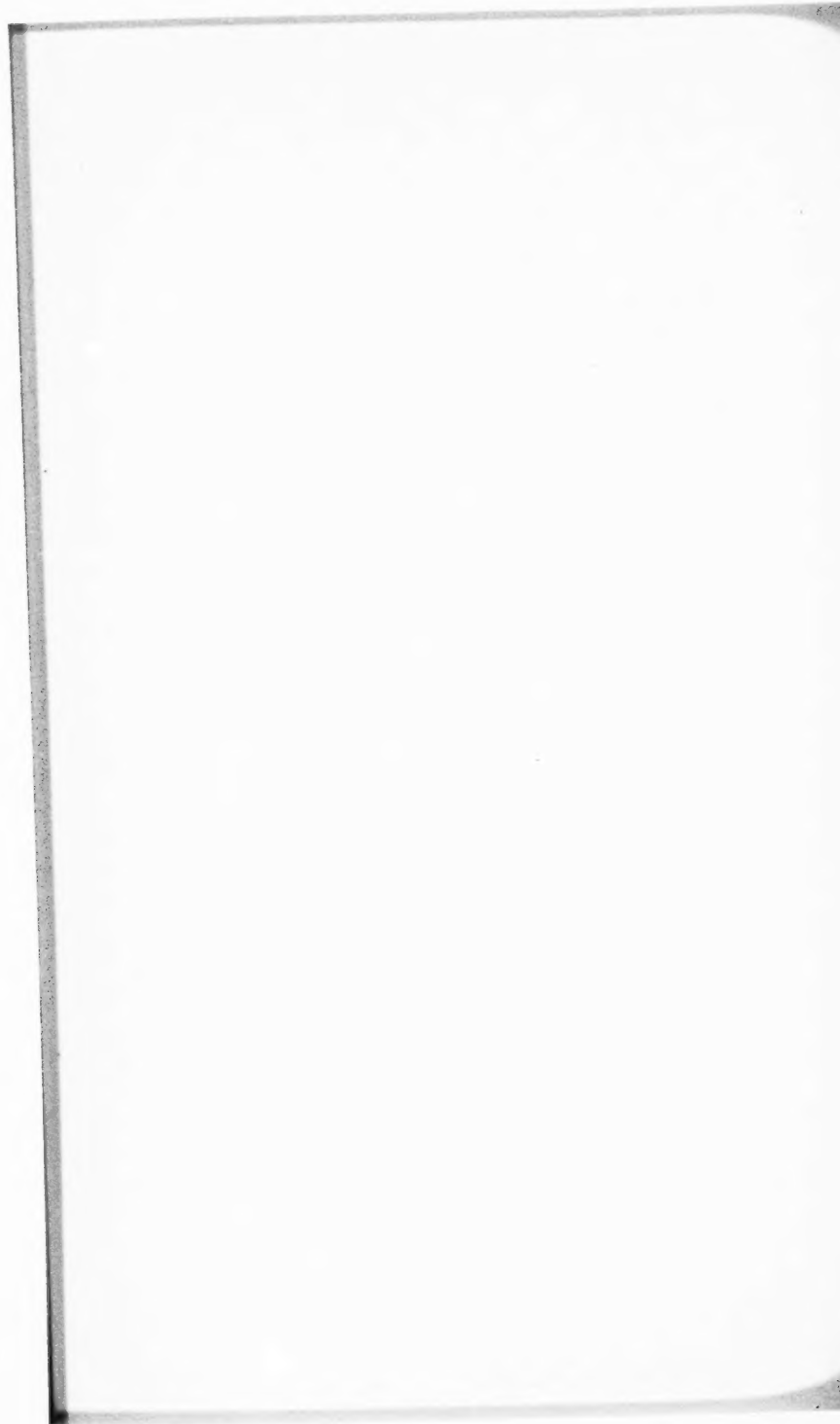
out regard to any prior claim to said lands, which had been terminated prior to the date of selection. The particular lands involved in the present case were not in controversy in any prior suit between the parties and the doctrine that this question, which might have been raised, but was not raised in any former suit, is now barred, would have reference only to lands particularly involved in the former suit. Inasmuch as in the present case the particular lands in question were not involved in any prior suit, there can be no bar except as to questions which were actually raised and determined in prior suits between the parties, and, as we have pointed out it has never yet been decided in any case that the Southern Pacific cannot select from its Branch Line indemnity limits lands within the forfeited Atlantic and Pacific Grant. The only case in which this question was fully argued and presented by the Southern Pacific to this Court, both orally and in the briefs, was the case in 183 U. S. 519, which was won by the Southern Pacific as to the main contention, and was dismissed as to the present contention, without prejudice to the right of the Southern Pacific to raise it again in a subsequent litigation. In view of this express permission to again raise this question given to

the Southern Pacific Railroad by this Court, how can the claim now be made, that the Southern Pacific is barred from raising it in the present case, by reason of a decision made prior to the decision of this Court giving express permission to again present the question to this Court.

**SECOND POINT.**

**The judgment and decree of the court below should be reversed.**

MAXWELL EVARTS,  
Of Counsel for Appellants.



## APPENDIX.

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### **Atlantic and Pacific Act (14 United States Statutes at Large, p. 292).**

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That John B. Brown, Anson P. Morrill, Samuel F. Hersey, William G. Crosby, Samuel E. Spring, Samuel P. Dinsmore, of Maine; N. S. Upham, Frederick Smyth, Onslow Stearns, S. G. Griffin, William E. Chandler, of New Hampshire; T. W. Park, H. H. Baxter, John Gregory Smith, A. P. Lyman, of Vermont; Walter S. Burges, William S. Slater, Stephen Harris, Thomas P. Shepard, of Rhode Island; William Merritt, Alexander H. Bullock, George L. Stearns, Genery Twichell, Charles H. Warren, Chester W. Chapin, of Massachusetts; John Boyd, Robert C. Wetmore, John T. Wait, Cyrus Northrop, of Connecticut; Solon Humphreys, J. Bigler, Homer Ramsdell, Isaac H. Knox, John A. C. Gray, Daniel L. Ross, A. V. Stout, M. K. Jessup, R. E. Fenton, E. L. Fancher, J. C. Fremont,

James Hoy, Jesse M. Bolles, Edward Gilbert, James P. Robinson, Oliver C. Billings, of New York ; Charles Bachelor, John Edgar Thompson, Morton McMichael, T. Haskins Du Puy, Thomas A. Scott, Charles Rickettson, William Lyon, George W. Cass, Levi Parsons, of Pennsylvania ; Charles Knap, J. L. N. Stratton, James B. Dayton, Robert F. Stockton, Alexander G. Cattell, A. W. Markley, of New Jersey ; John W. Garrett, Charles J. M. Gwinn, Robert Fowler, Jacob Tome, Thomas M. Lanahan, of Maryland ; Charles J. Dupont, Henry Ridgley, Andrew C. Gray, Nat. Smythers, of Delaware ; Bellamy Storer, George B. Senter, William Baker, Samuel Galloway, David Tod, Charles Anderson, Bird B. Chapman, Edward Sturgis, Israel Dille, of Ohio ; Edwin Peck, William D. Griswold, James P. Luse, Samuel E. Perkins, Conrad Baker, of Indiana ; Richard J. Oglesby, N. B. Judd, Samuel A. Buckmaster, D. L. Phillips, L. P. Sanger, of Illinois ; Eber B. Ward, Omar D. Congar, Nathaniel W. Brooks, Alexander H. Morrison, of Michigan ; Z. G. Simmons, Alexander Mitchell, J. J. Williams, G. A. Thompson, J. J. R. Pease, John H. Hersey, of Wisconsin ; Henry A. Smith, Sherman Finch, William Mitchell, R. F. Crowell L. F. Hubbard, E. F. Drake, of Minnesota ; Lyman Cook, Platt Smith, Jacob Butler, Henry I. Reid, Hoyt Sherman, of Iowa ; William G. Brownlow, of Tennessee ; Thomas C. Fletcher, B. R. Bonner, John M. Richardson, Emil Prentorious, E. W. Fox, R. J. McElheny, Charles H. Howland, Madison Miller, George W. Fishback, T. J. Hubbard, George Knapp, Charles K. Dick-

son, A. G. Braun, G. L. Hewitt, P. A. Thompson, James W. Thomas, Charles E. Moss, Edward Walsh, A. R. Easton, Truman J. Horner, J. B. Eads, D. R. Garrison, W. A. Kayser, George P. Robinson, of Missouri ; Thomas E. Bramlette, Benjamin Gratz, C. E. Warren, Lazarus W. Powell, John Mason Brown, Joshua Speed, of Kentucky ; Solon Thatcher, Jacob Stotter, William B. Edwards, James G. Blunt, Robert McBratney, of Kansas ; Harrison Hagus, James Cook, Robert Crangle, Benjamin H. Smith, of West Virginia ; Lorenzo Sherwood, A. J. Hamilton, of Texas ; William Gilpin, Henry C. Leach, of Colorado ; Phinneas Banning, Timothy G. Phelps, William B. Carr, Edward F. Beale, Fred. F. Lowe, Benj. B. Reading, B. W. Hathaway, Leonidas Haskell, Frederick Billings, of California ; W.S. Ladd, J. R. Moores, Walter Monteith, John Kelly, B. F. Dowell, of Oregon ; James L. Johnson, Henry Connelly, Franciscus Perea, of New Mexico ; J. H. Mills, A. P. K. Safford, E. S. Davis, of Nevada ; King S. Woolsey, William H. Hardy, Coles Bashford, of Arizona ; Henry D. Cook, of the District of Columbia ; and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Atlantic and Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby

authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the Town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said Company to a point on the Canadian River; thence to the Town of Albuquerque, on the River Del Norte, and thence by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route to the Colorado River, at such point as may be selected by said Company for crossing; thence by the most practicable and eligible route to the Pacific. The said Company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly along the most suitable route as selected to a point in the western boundary line of Arkansas, at or near the Town of Van Buren. And the said Company is hereby vested with all the powers, privileges and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said Company shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the laws of said corporation shall provide. The persons hereinbefore named are hereby appointed commissioners, and shall be called the "Board of Commissioners of the Atlantic and Pacific Rail-

road Company," and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Turner Hall, in the City of St. Louis, on the first day of October, anno Domini eighteen hundred and sixty-six, or at such time within three months thereafter as any ten commissioners herein named from Missouri shall appoint, notice of which shall be given by them to the other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Cincinnati, Saint Louis, Memphis and Nashville, once a week for at least four weeks previous to the day of meeting. Said board shall organize by the choice from its number of a President, Vice-President, Secretary and Treasurer, and they shall require from said Treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof, as they may deem proper. The Secretary shall be sworn to the faithful performance of his duties, and such oath shall be entered upon the records of the company, signed by him, and the oath verified thereon. The president and secretary of said boards shall, in like manner, call all other meetings, naming the time and place thereof. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities or other places in the United States as they or a quorum of them shall determine, within twelve months after the passage of this act; to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions,



and to receipt therefor. So soon as ten thousand shares shall in good faith be subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened, at least fifteen days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by lawful proxy, then and there shall elect, by ballot, thirteen directors for said corporation ; and in such election each share of said capital stock shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners, and, in case of their absence or inability, any two of the officers of said board shall act as inspectors of said election, and shall certify, under their hands, the names of the directors elected at said meeting. And the said commissioners, treasurer and secretary shall then deliver over to said directors all the moneys, properties, subscription books and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen), and for the transaction of business, shall be holden at such time and place and upon such notice as may be prescribed in the by-laws.

SEC. 2. *And be it further enacted*, That the right of way through the public lands be, and the same is hereby, granted to the said Atlantic and Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed, and the right, power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables and water stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

SEC. 3. *And be it further enacted*, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops. munitions of war and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of

twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States; and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections and not including reserved numbers; *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided, further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided, further*, That all mineral lands be, and the same

are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided, further,* That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided, further,* That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

SEC. 4. *And be it further enacted,* That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the Company to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act the commissioners shall so report under oath to the President of the United States, and patents of lands as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall been constructed, completed and in readiness as afore-

said, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

SEC. 5. *And be it further enacted*, That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations and watering places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line of the most substantial and approved description, to be operated along the entire line: *Provided*, That the said company shall not charge the Government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Atlantic and Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the Legislature of any Territory or State in which the same may be situated, to form running connections with it, on fair and equitable terms.

SEC. 6. *And be it further enacted*, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after

the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An Act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

SEC. 7. *And be it further enacted*, That the said Atlantic and Pacific Railroad Company be, and is hereby, authorized and empowered to enter upon, purchase, take and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station-houses, or any other structures required in the construction and working of said road. And the said company shall have the right to cut and remove trees and other material that might, by falling, encumber its roadbed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or

premises and the said company cannot agree as to the value of the premises taken, or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by either party to any court of record in any of the Territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return into court of such appraisal, and upon the payment into the same of the estimated value of the premises taken for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said appraisal may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary and proper in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and, in case the party appealing does not obtain a verdict more favorable, such party shall pay the whole cost incurred by the appellee, as well as his own, and the payment into court, for the use of the owner of said premises taken, at a sum equal to that finally awarded,

shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintenance and operation of said road. And in case any of the lands to be taken, as aforesaid, shall be held by an infant, femme covert, non compos, insane person, or persons residing without the Territory within which the lands to be taken lie, or persons subjected to any legal disability, the court may appoint a guardian, for any party under any disqualification, to appear in proper person, who shall give bonds, with sufficient surety or sureties, for the proper and faithful execution of his trust, and who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of said company, and with the same effect as has been already described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession, reversion or remainder, the value of any such estate, less than a fee simple, shall be estimated and determined in the manner hereinbefore set forth. And in case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in the manner described, for



the purpose of ascertaining the value of, and of acquiring a title to, the same; but the judge of the court hearing said suit shall determine the kinds of notice to be served on such owner or owners, and he may in his discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred.

SEC. 8. *And be it further enacted*, That each and every grant, right and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish and complete the main line of the whole road by the fourth day of July, Anno Domini eighteen hundred and seventy-eight.

SEC. 9. *And be it further enacted*, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and

things which may be needful and necessary to insure a speedy completion of the said road.

SEC. 10. *And be it further enacted*, That all people of the United States shall have the right to subscribe to the stock of the Atlantic and Pacific Railroad Company until the whole capital named in this act of incorporation is taken up by complying with the terms of subscription.

SEC. 11. *And be it further enacted*, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

SEC. 12. *And be it further enacted*, That the acceptance of the terms, conditions and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act and not afterwards, and shall be deposited in the office of the Secretary of the Interior.

SEC. 13. *And be it further enacted*, That the directors of said company shall make and publish an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, a copy of which shall be deposited in the office of said Secretary of the Interior, and they shall,

from time to time, fix, determine and regulate the fares, tolls and charges to be received and paid for transportation of persons and property on said road or any part thereof.

SEC. 14. *And be it further enacted*, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice-president; and said board of directors shall, from time to time, and so soon as may be after their election, choose a treasurer and secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds, with such security, as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to the faithful discharge thereof, and said oath shall be made a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

SEC. 15. *And be it further enacted*, That the president, vice-president and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, respectively, and until others are chosen in their place, and qualified. In case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of

whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate and effects of the company, the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

SEC. 16. *And be it further enacted*, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such times and in such proportions and on such conditions as they shall deem to be necessary to complete the said road and telegraph lines within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required, and of the time and place of payment, by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Cincinnati, Saint Louis, Memphis and

Nashville, and in case any stockholder shall neglect or refuse to pay, in pursuance of such notice, the stock held by such person shall be forfeited absolutely to the use of the company, and also any payment or payments that shall have been made on account thereof, subject to the condition that the board of directors may allow the redemption on such terms as they may prescribe.

SEC. 17. *And be it further enacted*, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid or assistance which may be granted to or conferred on said company by the Congress of the United States, by the legislature of any State, or by any corporation, person or persons, or by any Indian tribe or nation through whose reservation the road herein provided for may pass; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid or assistance, to its own use, for the purpose aforesaid: *Provided* that any such grant, or donation, power, aid or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States.

SEC. 18. *And be it further enacted*, That the *Southern Pacific Railroad*, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said *Atlantic and Pacific Railroad*, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or

*fare with said road ; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.*

SEC. 19. *And be it further enacted*, That unless the said Atlantic and Pacific Railroad Company shall obtain *bona fide* subscriptions to the stock of said company to the amount of one million of dollars, with ten per centum paid, within two years after the passage of and approval of this act, it shall be null and void.

SEC. 20. *And be it further enacted*, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend or repeal this act.

SEC. 21. *And be it further enacted*, That whenever in any grant of land, or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners or other agents to examine said roads, or act in conjunction with other officers of said company or companies, all the costs, charges and pay of said

directors, engineers, commissioners or agents shall be paid by the respective companies. Said directors, engineers, commissioners or agents shall be paid for said services the sum of ten dollars per day for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily traveled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for said services. And in case any company shall refuse or neglect to make such payments, no more patents for lands or other subsidies shall be issued to said company, until these requirements are complied with.

*Approved, July 27, 1866.*

**Section 23 of the Texas Pacific Act (16  
United States Statutes at Large, p. 579.)**

SEC. 23. That, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California, by the Act of July twenty-seven, eighteen hundred and sixty-six: *provided, however*, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

*Approved, March 3, 1871.*



**Atlantic and Pacific Forfeiture Act (24 United States Statutes at Large, p. 123).**

An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast, and to restore the same to settlement and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all the lands, excepting the right of way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine-shops, switches, side tracks, turntables and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of the said Act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be and the same are hereby, declared forfeited and restored to the public domain.

Approved, July 6, 1886.

# In the Supreme Court of the United States.

OCTOBER TERM, 1911.

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THE SOUTHERN PACIFIC RAILROAD COM- pany, D. O. Mills and Homer S. King, Trustees, and Central Trust Company of New York, Trustee, Appellants,	} No. 121.
<i>v.</i>	
THE UNITED STATES.	

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*APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.*

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## STATEMENT, BRIEF, AND ARGUMENT FOR THE UNITED STATES.

This a bill to quiet title to certain land in California. It was brought by the United States against the Southern Pacific Railroad Company, a California corporation, D. O. Mills and Homer S. King, trustees, and the Central Trust Company of New York, trustee. These trustees are made parties by reason of their having or claiming to have a lien upon the lands in suit by virtue of mortgages executed by the Southern Pacific to secure issues of bonds. They stand, so far as this case is concerned, in the same right as the railroad company. By

stipulation one Jackson Alpheus Graves was added as a party defendant. (R., 58-61.) His interest arises as a purchaser of part of the land in suit (R., 94), but as he has not appealed he may be disregarded in this consideration.

The case was submitted to the Circuit Court on May 21, 1906, on bill, answer, and replication, and on the proofs, which consisted entirely (R., 96) of stipulations as to evidence and facts (R., 72, 98, 100), and parts of the records in two former cases between the United States and the Southern Pacific, which were offered and received as complainant's Exhibits K and L (R., 104, 327). These are the cases reported in 168 U. S. 1, and 184 U. S. 49, respectively. The decree, entered March 18, 1907, adjudged the United States to be the owner of the lands in suit and enjoined the defendants from asserting any title to them. The patents issued to the Southern Pacific were ordered canceled and annulled. (R., 67.) On appeal by all the defendants excepting Graves, the Circuit Court of Appeals for the Ninth Circuit affirmed this decree on the ground that former adjudications of this court have rendered the subject matter of the controversy *res judicata*. (R., 429.) From this decision the same defendants appeal to this court.

The controversy arises because of the overlapping of the limits of the land grant to the Atlantic & Pacific Railroad Company and those of what is known as the branch line grant to the Southern Pacific Railroad Company, the overlap resulting from the intersection of the two lines.

### The grant to the Atlantic & Pacific

was made by the act of July 27, 1866, c. 278, 14 Stat. 292, which statute also created the corporation and empowered it to build a line from Springfield, Missouri, to the Pacific Ocean. The grant lies in section 3, which is set out hereafter as Appendix A. There is first a primary grant, within prescribed limits, of alternate odd-numbered sections of land, not mineral, and not otherwise appropriated at the time of the filing of the map of location of the railroad. It is *in presenti*: "that there be and hereby is granted." Then there is an indemnity grant, within other limits, of lands to be selected by the company to make up for deficiencies in the primary grant. Section 6, which is here made Appendix B, directs a survey of the lands after the fixing of the general route, and declares that the odd sections granted shall not be liable to entry except by the railroad company. The conditions of the grant pertinent here are in sections 8 and 9, hereafter printed as Appendix C.

During the year 1872 the Atlantic & Pacific filed in the Interior Department maps designating the line of the road it proposed to build. (R., 73.) These were accepted as maps of definite location and must be taken here as such. (168 U. S. 1.) Accordingly the Secretary of the Interior made formal withdrawal of the appropriate lands from other entry or disposition. The rights of the company—whatever they were, and being of course always contingent for their perfection upon their

being earned by construction of the road—were declared to attach as of the dates of filing of the maps. (R., 74.)

The Atlantic & Pacific failed to construct its road in California, and for this breach of condition all the lands, within both the granted and indemnity limits, granted to it by the act of 1866 and subsequent acts were “declared forfeited and restored to the public domain”—this by the act of July 6, 1886, c. 637, 24 Stat. 123, which is here set out as Appendix D.

#### **The Southern Pacific branch line grant**

was made by the act of March 3, 1871, c. 122, 16 Stat. 573, which created the Texas Pacific Railroad Company and authorized it to build a line from Texas to San Diego, California. To connect this line with San Francisco, section 23, which is Appendix E herein, empowered the Southern Pacific Railroad Company to construct a road over a designated route. This is the branch line. To support it the Southern Pacific was given “the same rights, grants, and privileges, and subject to the same limitations and conditions, as were granted” to it by the act of July 27, 1866 (*i. e.*, the Atlantic & Pacific act). This refers to section 18 of the act of 1866, which authorized the Southern Pacific to build a road connecting the Atlantic & Pacific with San Francisco and made to it grants “similar” to and “subject to all the conditions and limitations” attached to the Atlantic & Pacific grant made by the same act of 1866, thus referring the definition still further to section 3 of that act,

which here has been made Appendix A. Section 18 also is set out in Appendix F. It may be pointed out that the actual grant made by this section—known as the Southern Pacific main line grant—does not include the lands in suit; we are simply concerned with section 18 of the act of 1866 by reference from section 23 of the act of 1871 to define the branch line grant.

The Southern Pacific filed its map designating the route of the branch line on April 3, 1871 (R., 88), and on April 21, 1871, the withdrawals of the appropriate sections were made by the Interior Department for the benefit of the grant (R., 89). Ultimately it was fully earned (R., 88, 89) by the construction of the road. All this was done by December 6, 1877. (R., 89, 90.)

Although the Southern Pacific map was filed before the Atlantic and Pacific, the grants must be regarded as having taken effect by relation as of the dates of the respective acts. (146 U. S. 570, 595; 168 U. S. 1, 61.)

### **The overlapping limits**

involved are the branch line indemnity limits and the Atlantic & Pacific limits both primary and indemnity. Within the common area the Southern Pacific selected the lands which are the subject of the bill as falling under the indemnity provisions of the branch line grant of March 3, 1871. The selection filed in the Los Angeles land office November

10, 1902, is admitted to have been in due form. (R., 93.) Pursuant to it patents were issued to the company on June 30, 1903. (R., 93.) These are the patents sought to be annulled.

A summary of the situation, then, shows the following:

Both parcels in the bill (described R., 11) are within the indemnity limits of the branch line grant (*i. e.*, sec. 23 of the act of Mar. 3, 1871) to the Southern Pacific (R., 92, 93).

Both are within the limits of the forfeited Atlantic & Pacific grant (*i. e.*, sec. 3 of the act of July 27, 1866), the first in the primary limits of that grant, the second in the indemnity. (R., 92, 93.)

Neither is within either the primary or indemnity limits of the main line grant (*i. e.*, sec. 18 of the act of July 27, 1866) to the Southern Pacific. (R., 92, 93.)

The map of definite location of the branch line was filed and the withdrawals were made before, and the indemnity selections under it were made long after, the forfeiture of the Atlantic & Pacific grant and its restoration to the public domain. (R., 88-90, 93.)

It is to be added that the records of the land office at Los Angeles show that within the branch line indemnity limits there remain 50,000 acres which are still open to selection by the Southern Pacific and which are not within the limits of the Atlantic & Pacific grant. (R., 93.)

### The question

becomes: *Is the Southern Pacific now entitled under the indemnity provisions of its branch line grant of March 3, 1871, section 23, to select lands which at the time of that grant and of the filing and acceptance of its map and the withdrawals in pursuance thereof were subject to either the primary or indemnity provisions of the Atlantic & Pacific grant of July 27, 1866, but which subsequently, by the act of July 6, 1886, were forfeited for breach of condition by the Atlantic & Pacific and restored to the public domain?*

The defendant's contention is based on the principle that the title to indemnity lands does not accrue until the actual selection. It contends, then, that the right to select the lands in suit depends on their status, as public lands, at the date of their selection, irrespective of their status at some former time; hence, as they were public lands at the time of selection, the selection under consideration was lawfully made. In other words, it asserts that the forfeiture of the Atlantic & Pacific grant placed the lands in the category of public lands subject to the indemnity provisions of the branch line grant.

### ARGUMENT.

#### I.

**The question is res judicata because of the decision of this court in *Southern Pacific Railroad Company v. United States*, 168 U. S. 1.**

There part of the lands claimed by the company were situated—precisely as here—within the indemnity limits of the Southern Pacific branch line



grant of 1871, and also within either the primary or indemnity limits of the forfeited Atlantic & Pacific grant of 1866. The issues were determined in favor of the Government on the ground that in view of the conditions attached to the grant and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the forfeiting act of 1886, the property of the United States and by force of that act were restored to the public domain, without the Southern Pacific having acquired any interest therein that affected the United States. This ground is broad enough to include the present issue, but, what is more to the point just now, the court itself certainly considered that it was passing in part on a situation exactly like this; for it is said in the opinion by Mr. Justice Harlan (pp. 46, 47):

The lands now in controversy are situated opposite to and are coterminous with the first, second and fourth sections of the Southern Pacific Railroad as constructed between 1873 and 1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the 23d section of the Texas and Pacific act of March 3, 1871; the 61,939.62 acres patented to that company being opposite to the first and fourth sections of its road. It may be said that the lands here in dispute belong to one or the other of the following classes: Lands within the common granted limits of both the Atlantic and Pacific grant of 1866 and the Southern Pacific grant of 1871;

lands within the granted limits of the Southern Pacific grant and the indemnity limits of the Atlantic and Pacific grant; *lands within the Southern Pacific indemnity limits and the Atlantic and Pacific granted limits; lands within the common indemnity limits of both grants.* Of those in dispute, 219,012.93 acres have not been surveyed by the United States.

Words could scarcely be clearer on the point than these.

If more is needed, we refer to the record in that case, or to the sufficient part of it that is in evidence here. (R., 104.) The patents under consideration show that the lands were within the branch line indemnity limits, for they recite "whereas, certain tracts have been selected under the said act of March 3, 1871, by \* \* \* [the] Land Agent of the said Southern Pacific Railroad Company," etc. (R. 234, 244, 252, 260), and the description of one tract refers to it as being in the "indemnity thirty miles limits" (R., 235).

Still further confirmation is had by reference to another case between the same parties. *Southern Pacific Railroad Company v. United States*, 189 U. S. 447, 451-452. It was said that the contention that the company had a right to take the forfeited lands under its indemnity grant was disposed of by the case in 168 U. S. And this the court said notwithstanding the case of *Ryan v. Railroad Co.*, 99 U. S. 382—a case which is now strongly urged by the appellants to avoid what was in the courts below regarded and

what is here contended as the effect of the 168 U. S. case.

(The same situation as in 168 U. S. 1, was before the court in the cases of *The United States v. Southern Pacific Railroad Co.*, 184 U. S. 49, 53, and *Southern Pacific Railroad Co. v. The United States*, 200 U. S. 341. Those cases in effect constitute a reaffirmance of the 168 U. S. case.)

Under the rule, then, that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery can not be disputed in a subsequent suit between the same parties, the appellants here are precluded from asserting any indemnity rights under the act of 1871 to lands within either the primary or indemnity limits of the Atlantic & Pacific grant of 1866. 168 U. S. 48 *et seq.*

Irrespective of this, the question is disposed of by the rules that govern generally cases of conflicting railroad grants and particularly the grants here involved.

It may be readily conceded, as the defendant contends, that the right to select depends on the status of the lands at the time of selection. But there is a fundamental fallacy in the further assumption that the lands in suit had the same status as the lands the defendant was originally authorized to select; that the forfeiting act of 1886 placed the lands in the category of public lands conveyed by the branch line indemnity grant of 1866. This is precisely what the forfeiting act did not do.

The status of these lands so far as the defendant is concerned was fixed at the time of the grant of 1866: they were then lands which the defendant could not select; they were reserved for the Atlantic & Pacific. This is emphasized by the clause in the section of the act of 1871 under which the defendant now claims, providing that this section should "in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company." *Cf.* 189 U. S. 447, 449; 168 U. S. 1, 45-46. Further, by section 6 of the act of 1866, they were lands "not liable to sale or entry, or preemption, before or after they are surveyed, except by" the Atlantic & Pacific.

That status, again so far as the defendant is concerned, has in no way been changed. For the public it has been changed. The lands are now "liable to sale or entry or preemption." The act of 1886 was necessary to work this change. That was what it was intended to do and all that was intended. To give this act—which in one aspect was the enforcement of a condition subsequent that only the United States could enforce—the further effect urged for it by the defendant, to say that the condition was enforced not only for the benefit of the United States and its general public but also for that of the defendant's special grant, is to effect an enlargement of that grant that is warranted by neither the language nor the intent of any of these acts of Congress.

Reference is made to the discussion in the briefs submitted in Nos. 128 and 129 between the same

parties. What is said there is in point here. There is, it is true, the difference that one of the tracts in this bill is within the indemnity limits of the Atlantic & Pacific. But the proviso in section 23 of the branch line grant renders it quite unnecessary to consider here any distinction that might be based on the factor that Nos. 128 and 129 are concerned only with Atlantic & Pacific primary lands. See *United States v. Southern Pacific Railroad Company*, 146 U. S. 615. Moreover, the forfeiture act of 1886 hit lands of the Atlantic & Pacific "embraced within both the granted and indemnity limits."

## II

No question is presented by the presence of the mortgagees, Mills and King, and the Central Trust Company of New York (R., 5), and the purchaser, Graves (R., 58-61), as parties to this action; they stand in the same right as the Southern Pacific.

The conclusion of the court in the case in 168 U. S. was "that the decree must be affirmed in all respects as to the Southern Pacific Railroad Company as well as to the trustees in the mortgage executed by that company," etc., 168 U. S. 66. The same situation appears to-day.

The defendant Graves has not appealed. In any event his joinder injects no other question into the case, for his position as not being a *bona fide* purchaser is settled by the case in 184 U. S. 49.

So, as no part of the lands in suit is in the hands of *bona fide* holders, the question involved is merely as to the title and the validity of the patents to the Southern Pacific.

It is respectfully submitted that the decree herein should be affirmed.

\*

F. W. LEHMANN,  
*Solicitor General.*

JANUARY, 1912.

## APPENDIX A.

[Section 3, Act of July 27, 1866, 14 Stat. 294.]

That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not

including the reserved numbers: *Provided*, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further*, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further*, That the word "mineral" when it occurs in this act, shall not be held to include iron or coal: *And provided further*, That no money shall be drawn from the treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."



## APPENDIX B.

[Section 6, Act of July 27, 1866, 14 Stat. 296.]

That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

## APPENDIX C.

[Sections 8 and 9, Act of July 27, 1866, 14 Stat. 297.]

(Sec. 8) That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

(Sec. 9) That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

## APPENDIX D.

[Act of July 6, 1886, c. 637, 24 Stat. 123.]

That all the lands, excepting the right of way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine-shops, switches, side-tracks, turntables, and water-stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast", approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and indemnity limits, as contemplated to be constructed under and by the provisions of the said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be and the same are hereby, declared forfeited and restored to the public domain.

## APPENDIX E.

[Section 23, Act of March 3, 1871, 16 Stat. 579.]

That, for the purpose of connecting the Texas Pacific railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however,* That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

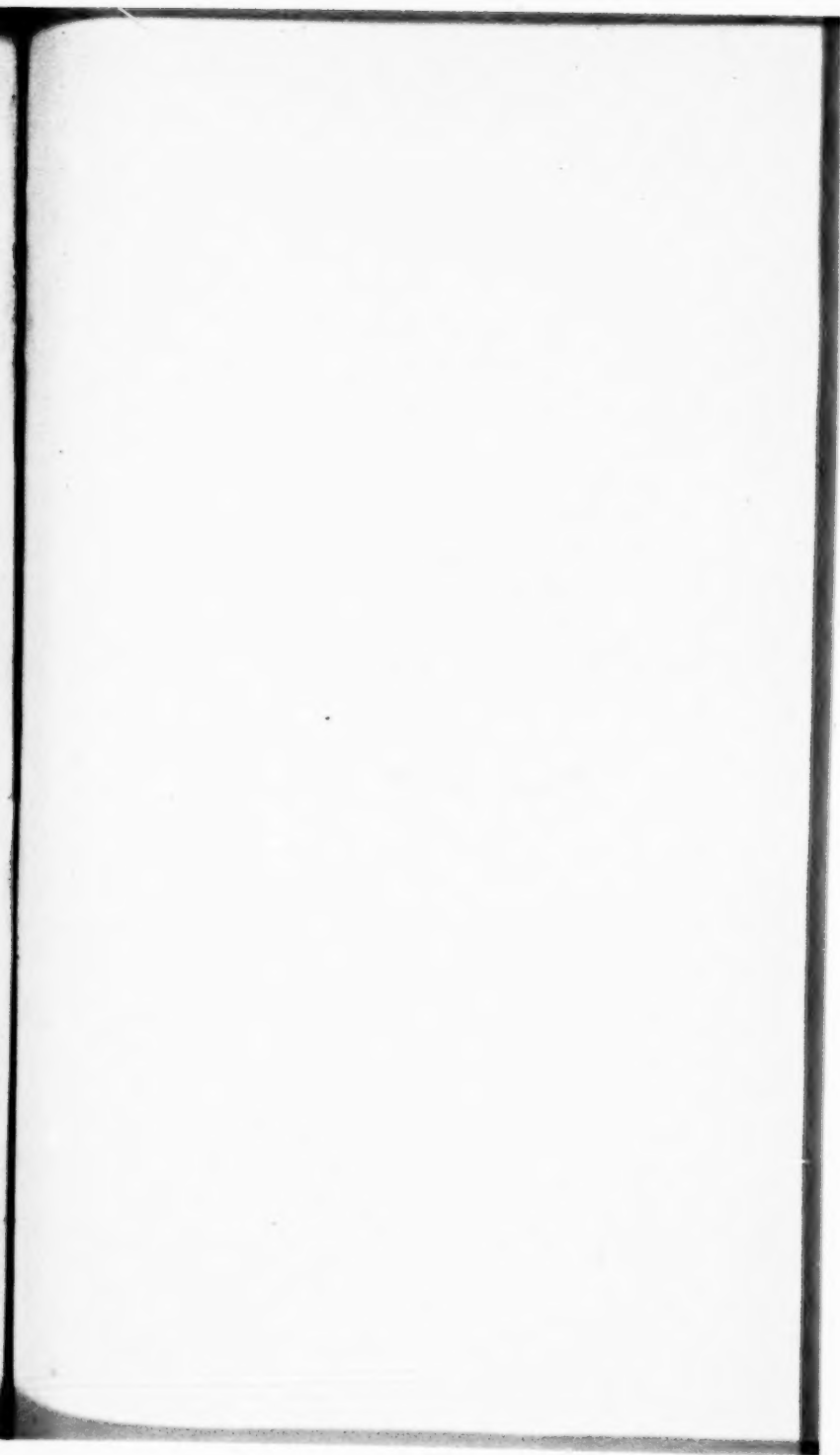
## APPENDIX F.

[Section 18, Act of July 27, 1866, 14 Stat. 299.]

That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for. §

(20)





SOUTHERN PACIFIC RAILROAD COMPANY *v.*  
UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT.

No. 121. Argued January 26, 1912.—Decided February 26, 1912.

The Southern Pacific Railroad Company is not entitled under the Branch Line Land Grant Act of March 3, 1871, c. 122, § 23, 16 Stat. 573, 579, to select as lieu lands within the indemnity limits specified in that act, any lands within the granted or indemnity limits of the grant made to Atlantic & Pacific Railroad Company by the act of July 27, 1866, 14 Stat. 292, c. 278, and forfeited by that road under the act of July 6, 1886, 24 Stat. 123, c. 637. *Southern Pacific Railroad Co. v. United States*, 168 U. S. 1, followed, and *Ryan v. Railroad Co.*, 99 U. S. 382, distinguished. 152 Fed. Rep. 314, and 167 Fed. Rep. 574, affirmed.

THE facts, which involve rights of the Southern Pacific Railroad Company under its branch line grant to lands within the overlap of the Atlantic and Pacific Railroad Company grant, are stated in the opinion.

*Mr. Maxwell Evarts* for appellants:

The Southern Pacific Railroad Company under its branch line grant of March 3, 1871, was entitled to select the lands in question in lieu of lands lost within the place limits of its grant.

A railroad is entitled to select indemnity lands from any lands within the indemnity limits of its grant which at the time of selection are public lands. In *Ryan v. Railroad Co.*, 99 U. S. 382, it was decided that whereas the rights of the company under such a grant in respect to lands within primary limits depend upon the status of the lands as public lands or otherwise at the date of the act,

and the time of definite location, the right to lands within indemnity limits does not depend upon the status of such lands at the date of the granting act, but upon their status as public lands or otherwise at the time of selection.

The question is: What is the land now when selection is sought to be made? Is it now public land or not? If it is now public land, then it is of no importance whatever what parties in the past may have had claims or rights thereto. See also *Alabama & Chattanooga R. R. Co.*, 20 L. D. 408; *Southern Pacific R. R. Co.*, 26 L. D. 452.

The status of lands within indemnity limits at the time of selection determines entirely the right of the railroad thereto. *Allers v. Northern Pacific R. R. Co.*, 9 L. D. 452; *Northern Pacific R. R. Co. v. Halvorson*, 10 L. D. 15; *Missouri, K. & T. Ry. Co. v. Beal*, 10 L. D. 504; *Northern Pacific R. R. Co. v. Moling*, 11 L. D. 138; *Hensley v. Missouri, K. & T. Ry. Co.*, 12 L. D. 19; *Northern Pacific R. R. Co. v. Bass*, 13 L. D. 201; *Hastings & Dakota Ry. Co. v. St. Paul, M. & M. Ry. Co.*, 13 L. D. 535; *St. Paul, M. & M. R. Co. v. Munz*, 17 L. D. 288; *South & North Alabama R. R. Co. v. Hall*, 22 L. D. 273; *Southern Pacific R. R. Co. v. McKinley*, 22 L. D. 493.

The *Ryan Case* has since its decision always been referred to with approval by this court. The decisions of the Interior Department since the *Ryan Case* have been in accord therewith. It is inconceivable that the doctrine of the *Ryan Case*, so important in land grant law and so long established, should be overturned by a decision of this court in which there was no discussion of, or reference to, the *Ryan Case*. The Southern Pacific Railroad is now entitled to select from within the indemnity limits of its branch line grant lands granted to the Atlantic and Pacific Railroad which were restored to the public domain by the Forfeiture Act of 1886, and were public lands of the United States, at the date of selection by the Southern Pacific and the issue of the patents therefor.



There is no pretense on the part of the Government that the railroad company is not entitled to indemnity lands to take the place of losses within its primary limits.

The ground alleged for the cancellation of the patents issued in this case is that this court has already decided that the Southern Pacific Railroad Company is not entitled to any indemnity land under its branch line grant within the limits of the forfeited Atlantic and Pacific grant, and the whole discussion centers upon the decision in *Southern Pacific R. R. Co. v. United States*, 168 U. S. 1.

The lands in controversy in this suit were not within the limits which were involved in the suit in 168 U. S. 1.

The cases in 146 U. S. 570; 146 U. S. 615, and 168 U. S. 1, determined one thing and one thing only, to wit, that the Southern Pacific Railroad Company took no place lands under its grant of March 3, 1871, which were in conflict with the Atlantic and Pacific grant.

This court, in 183 U. S. 519, was careful to point out that the only lands involved in 168 U. S. 1, were "granted" or place lands.

In no decision of this court has it been held that the Southern Pacific Railroad has not the right to select its indemnity lands from the forfeited limits of the Atlantic and Pacific grant.

No reason is suggested and never has been suggested or passed upon by this court as to why this particular grant should be deemed an exception to the general rule. This proposition has never been discussed or decided by this court.

*The Solicitor General* for the United States:

The Southern Pacific is not now entitled under the indemnity provisions of its branch line grant of March 3, 1871, § 23, to select lands which at the time of that grant and of the filing and acceptance of its map and the withdrawals in pursuance thereof were subject to either the

primary or indemnity provisions of the Atlantic and Pacific grant of July 27, 1866, but which subsequently, by the act of July 6, 1886, were forfeited for breach of condition by the Atlantic and Pacific and restored to the public domain.

The question is *res judicata* because of the decision of this court in *Southern Pacific Railroad Company v. United States*, 168 U. S. 1.

Still further confirmation is had by reference to another case between the same parties: *Southern Pacific Railroad Co. v. United States*, 189 U. S. 447, 451, 452, notwithstanding the case of *Ryan v. Railroad Co.*, 99 U. S. 382.

The same situation as in 168 U. S. 1, was before the court in the cases of *United States v. Southern Pacific Railroad Co.*, 184 U. S. 49, 53, and *Southern Pacific Railroad Co. v. United States*, 200 U. S. 341. Those cases in effect constitute a reaffirmance of the 168 U. S. case.

The proviso in § 23 of the branch line grant renders it quite unnecessary to consider here any distinction that might be based on the fact that cases Nos. 128 and 129 (*post*, p. 565) are concerned only with Atlantic and Pacific primary lands. See *United States v. Southern Pacific Railroad Company*, 146 U. S. 615. Moreover, the Forfeiture Act of 1886 hits lands of the Atlantic and Pacific embraced within both the granted and indemnity limits.

No question is presented by the presence of the other parties, the mortgagees stand in the same rights as the Southern Pacific.

The defendant purchaser has not appealed. In any event his joinder injects no other question into the case, for his position as not being a *bona fide* purchaser is settled by the case in 184 U. S. 49.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill brought by the United States to annul

patents for lands lying within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the act of March 3, 1871, c. 122, § 23, 16 Stat. 573, 579, known as the branch line grant, and within the grant made to the Atlantic and Pacific Railroad Company by the act of July 27, 1866, c. 278, 14 Stat. 292. The Atlantic and Pacific road forfeited its grant, (act of July 6, 1886, c. 637, 24 Stat. 123), and thereafter the Southern Pacific selected the two parcels in question, as indemnity under its branch line grant, one of them lying within the granted, and the other within the indemnity limits of the Atlantic and Pacific. It relies on the general principle that whether lands are subject to selection as indemnity depends upon the state of the lands at the time the selection is made. *Ryan v. Railroad Co.*, 99 U. S. 382. The Circuit Court, however, held that the right in this particular case had been decided not to exist, 152 Fed. Rep. 314, and the Circuit Court of Appeals affirmed the decree. 167 Fed. Rep. 514. 93 C. C. A. 150.

We are of opinion that the decision was right. In *Southern Pacific Railroad Company v. United States*, 168 U. S. 1, the lands in controversy embraced among others, as stated by Mr. Justice Harlan, "lands within the Southern Pacific indemnity limits and the Atlantic and Pacific granted limits; [and] lands within the common indemnity limits of both grants"—*ibid.* 47. It was held that the forfeiture to the United States did not enlarge the right of the Southern Pacific to select the lands in question and the decree was for the United States. The proposition laid down in *United States v. Southern Pacific Railroad Company*, 146 U. S. 570, and *United States v. Colton Marble & Lime Co.*, 146 U. S. 615, was applied to Southern Pacific branch line indemnity lands. Whatever may be thought of the grounds for making an exception to the principle of *Ryan v. Railroad Co.*, *supra*, the exception was established for this case. An elaborate argument was

made on petition for rehearing that the decision could not be extended to indemnity lands, but the petition was denied. In *Southern Pacific Railroad Co. v. United States*, 183 U. S. 519, the dismissal of the bill without prejudice to claims that by interpretation are said to include indemnity claims, imports no limitation of the previously established law, and on the other hand in *Southern Pacific Railroad Co. v. United States*, 189 U. S. 447, 451, 452, the case in 168 U. S. 1, was followed and the practice of the Land Department in accordance with that decision was mentioned as a further ground. There may be distinctions between the latest decision and this, but in view of the rightly established understanding it is too late to set them up now.

*Decree affirmed.*